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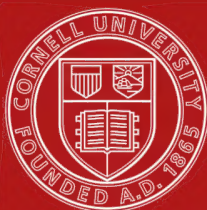
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MOSAICARUM ET ROMANARUM
LEGUM COLLATIO.

M. HYAMSON.



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MOSAICARUM ET ROMANARUM LEGUM COLLATIO.

WITH
INTRODUCTION, FACSIMILE AND TRANSCRIPTION
OF THE BERLIN CODĒX, TRANSLATION,
NOTES AND APPENDICES.

BY
REV. M. HYAMSON, LL.D., B.A.

HENRY FROWDE
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TO
MY WIFE.

PREFACE.

ROMAN Jurisprudence engages the attention of continental jurists to a greater extent than it does that of English lawyers, being of more practical interest to the former than to the latter. The Law of England, though it owes much indirectly to that of Rome, is not based on it as are the Laws of France and Germany. Still the ancient system is deserving of more study than it receives, if only as a magnificently developed system of thought, the product of a long succession of great minds.

For its proper understanding, however, one should begin at the beginning, with the remains of the Ante-Justinian juristic literature.

I commenced with the *Mosaicarum et Romanarum Legum Collatio*, because the title held out the prospect of an interesting comparison between two great systems. Closer inspection showed that this promise was illusory. Yet the problems of Age, Place, Authorship and Purpose, which occupied the minds of scholars from the sixteenth century onwards, deserve the attention of our own times. On these points I have not been content to repeat statements at second-hand. Wherever possible I have verified references, traced quotations to their sources, and carefully weighed the views of critics.

The facsimile of the Berlin MS. of the *Collatio*, the oldest and best of the three Codices, which is printed with a transcript, has enabled me to correct errors and supply deficiencies in Mommsen's *Apparatus of Variants*.

These I have arranged in columns, in order to help the reader to take in at a glance the salient features of each Codex and the marks by which it is distinguished from its fellows.

not exclusively. The purpose I have kept in view in the Notes has been to furnish references to the parallels in Roman Jurisprudence, elucidations of difficulties and occasionally brief statements of Rabbinical views where these would be helpful in the interpretation of the text or the subject matter.

I trust that this effort will find appreciation and stimulate others to cultivate a field of enquiry that is full of interest, and the study of which will bring us into touch with the intellectual giants of the past.

In conclusion I take the opportunity of expressing my thanks to Krüger, the surviving editor, and to the firm of Weidmann, the publishers, for their courteous permission to make the fullest use of the Berlin edition (1890), of the Ante-Justinian Jurisprudence.

It is also a pleasure to me to acknowledge the care and attention which the Publishers and Printers and the Foreman of the Compositors' room have bestowed on the execution of what typographically must have been a difficult piece of work.

M. H.

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ESSAYS ON THE COLLATIO.

THE MANUSCRIPTS OF THE COLLATIO.

THE *Collatio Legum Mosaicarum et Romanarum* is not mentioned in the classical Literature of Roman Jurisprudence. The first references to it are made by Hincmar, Archbishop of Rheims, who died in 882. His works¹ are rich in excerpts from Roman Law, most of them taken from Alaric's Breviary, and Julian's Epitome of the Novels. What is unique in Hincmar is that he also quotes the *Collatio*. In his treatise *de diuortio Lotharii et Tetbergae*, written about 860, he deals with the divorce of Lothar II., King of Lorraine, and Tetberga. The references to the *Collatio* are as follows: (Opp. T. 1, p. 627) "*Scriptum est in libro Leuitici; qui dormierit cum masculo coitu femineo, uterque operatus est nefas, morte moriantur; unde et leges Romanae decernunt in capitulis de stupratoribus, quod legens quisque inueniet.*" The statement concerning the Chapters *de stupratoribus* in the *Leges Romanae* refers to Title V., styled *de stupratoribus* in the *Collatio*. The concluding phrase, *quod legens quisque inueniet* shows that the *Collatio* must have been generally known to scholars. The second citation (*ibid*, p. 634), is more explicit. Hincmar complains that the Queen's brother had not been examined. He should have been summoned before the Court, and either the two parties who were accused of incest should both have been acquitted or both punished. *Veniat ille qui in sua libertate est, et legaliter aut quod ei impingitur defendens liberetur aut illis de quibus reputatur, quoniam non solum particeps, sed etiam auctor et executor criminis est, concredens legaliter puniatur, et aut in liberatione illius ista quae in custodia est et propter timorem super se mendacium dicit, legaliter liberetur aut in punitione illius legaliter puniatur, sicut in primo libro legis Romanae capitulo sexto de stupratoribus et in capitulo septimo de incestis et turpibus nuptiis praecipitur et in ceteris quae Christiana iura depromunt, iusti iudices legere possunt.* It will be noticed that Hincmar quotes *de stupratoribus* as Chapter VI., and *de incestis et turpibus nuptiis* as Chapter VII.

¹ Hincmari Opp. ed. Sirmond. T. 1 and 2. Paris, 1645. Folio.

This is either a slip, or we may assume that Hincmar took Title I. *b* as a separate title; for in the extant manuscripts of the *Collatio*, *de stupratoribus* is Title V., and *de incestis nuptiis* is Title VI.¹ As these topics are not treated successively in this order in any other source, the *Lex Romana*, of which Hincmar speaks, undoubtedly designates a Codex of which the *Collatio* formed part; and since he speaks of these chapters as being in *primo libro legis Romanae*, the *Collatio*, it has been suggested, stood first in the Codex which he quotes.²

Jean Dutillet (Joannes Tilius Meldensis), Bishop of St. Briec, afterwards of Meaux (died 1570), visited, about 1544, the libraries of the North French Monasteries and found fragments of the *Collatio* which he attributed to Licinius Rufinus.³

He did not publish them for the same reason that he did not publish Ulpian till 1549, because the copies which came into his possession before that year, and some of which he saw at the same time as the *Collatio*, were imperfect.⁴ Dutillet's Fragments of the *Collatio* are now lost.

Three manuscript codices containing the *Collatio* are still extant. They are known as the Berlin, Vienna and Vercelli Codices. The Berlin Codex⁵ is assumed by all critics to be identical with the MS. found by Pierre Pithou,⁶ the first editor,

¹ Mommsen suggests that Hincmar's manuscript, like the Berlin Codex, had, before the title, *de stupratoribus*, the phrase: *expl. titulo quinto*.

² Savigny's view (see his *Geschichte des Roemischen Rechts im Mittelalter*, Bk. ii., pp. 280-283) is, that in Hincmar's *Lex Romana*, the *Collatio* stood first, followed possibly by Julian's Epitome, Alaric's Breviary and the Theodosian Code. His ground for assuming that Hincmar's Codex must have contained the Theodosian Code, separated from the *Collatio* by two books, is that Hincmar quotes the Fourth Book of the Theodosian Code as the Sixth: Opp. Tom. II., p. 501 *et item in libro sexto, titulo decimo nono, inter alia praecipitur: ut sententia, si sine scripto dicta fuerit, nec nomen sententiae habere mereatur*. This, apparently, is from the Theodosian Code, lib. iv., tit. 17. const. 1. Haenel has, however, shown (on the passage in his edition, pp. 414, 415), that Hincmar took it from Justinian's Code, (vii. 44, 3), and wrote Lib. vii., tit. xliiii. The "L" was turned by a scribe into "V." Mommsen (p. 112 of his edition, *Ante-Justiniani Iuris*, etc.), thinks that Hincmar's Codex contained the *Collatio* after Julian's Epitome, and that the words *primus liber* were at the beginning of the *Collatio*, as in the Vienna Codex: *Incipit liber primus*.

³ Pithou's first note (p. 66, ed. princeps; p. 109 in Heidelberg edition, Brit. Mus. 877 e. 4): *Inaudieram equidem antea fuisse ex priscis scriptoribus aliquem qui cum Moysis legibus Romanas contulisset; ac memini Jo. Tilium antiquae eruditionis hominem, cum de veterum iurisconsultorum reliquiis sermo esset, narrare solitum habuisse aliquando se eius operis fragmenta pauca quibus ille Licinii Rufini nomen tribuebat*.

⁴ Cp. Hugo's *Gelehrten-geschichte*, 3rd edition, pp. 229, 230; and his *Index Editionum Fontium*, etc., pp. 135, 136.

⁵ Berlin Royal Library, No. 269.

⁶ Haenel, in the preface to his edition of Julian's Epitome (pp. iv. and v.), doubts whether this was the only MS. used by Pithou for his edition of the *Collatio*.

who states that he took the MS. in 1570 from an ancient library of the Sequani, or rather Mandubii, in which it had been concealed for more than 80 years. (Probably he meant 800 years).¹

From this MS. he edited the whole work in 1572.² Before doing so, he communicated his discovery to his fellow-workers and friends, Charondas, Contius, Cujas, Scaliger, by each of whom it was utilised.

Ludovicus Charondas published at Antwerp, in 1575, an edition of the Digest. In a preface, dated Paris, 1st January, 1572, he quotes from the *Collatio Romanorum cum Moysis Legibus* which, he says, he found in a *Codex Bibliothecae Dionysianae*, i.e., in the library of the Abbey of St. Denys. The text of the quotation, Title I., chap. 11, is identical with that in Pithou's MS., as the *Varia Lectio*, given in the margin clearly shows.³

Antonius Contius' edition of his *Lectiones Subseciuae*, published 1573,⁴ has, on page 74, as Chapter ix., an excerpt—*frag-*

¹ Pithou's Edition of the Collatio, prefatory note on i. 1, *Illud affirmare liquet quae nunc damus ex antiquissima Sequanorum aut Mandubiorum potius bibliotheca in qua per annos octoginta (in the Heidelberg edition octingentos) et amplius latuerunt.*

² The Dedication is dated Lutetiae Parisiorum Kalend. Octobr., 1572.

³ The passage in the Preface of Charondas' Digest is as follows: *Unum referam locum ex libro qui Licinii Rufini esse creditur, de collatione legum Romanarum cum Moysis legibus, quem habeo manuscriptum ex bibliotheca Dionysiana: illius fragmentum unum legitur in cap. 4 D. ad legem Corneliam de sicariis et alterum in cap. 5 in fine D. de poenis. Ideo uero locum illum referre statui, quia multum pertinet ad explicandam aequitatis rationem, et quam delictis puniendis moderationem adhibere oporteat, ostendit, in quo praecipua vis legis consistit; ut eleganter in illius definitione Papinianus exprimit. Sic igitur in eo libro legitur. Ulpianus libro et titulo quo supra. Cum quidam per lasciuiam . . . Vellem (in margin, Deest aliquid in libro manuscripto Rufini, nempe, rescribas, uel aliud simile nec cupiditatis culpam (in margin, Fortè legèdum cupiditatem culpae) et sane in omnibus criminibus distinctio hæc poenarum aut iustitiam (in the margin, ex hoc loco emendanda est l. 5 in fin. D. de poenis, et pro poenam iustam, legèdum, poenarum iustitiam). Charondas also quotes a correction from Pithou's Collatio. In his edition of Justinian's Code, IV., 34, 1, 10, on *Idem AA. et CC. Septimiae*, he has, in margin, Note K, *Septimiae. In fragmentis Pithoei*, idem A. & CC. vii. et quadrat: emendat Pithoeus recte Septimio et Quadrato, nã in quib, uet. ex p. hic legitur, Septimo. Also in Justinian's Code, vi, 65, 1, on the Inscription *Imp. Antoninus A. Agrippino*, he has in margin: *In fragmentis Pithoei Julio Agrippino*, and at the end of this Constitution, he has in the margin Prop. iiii., *Non. nou. Antonino III. Cons. Hanc subscriptionem reperi in fragmentis Pithoei tit. x, ex quodam Pauli responso, qui hanc constitutionem declarare respondit his qui horrea locant maiorẽ uim imputari non posse.**

The date of Charondas' edition of the *Corpus Juris Civilis* is 1575. There are no further references to the Collatio.

⁴ *Antonii Contii iurisconsulti lectionum subseciuarum iuris civilis liber primus ab auctore denuo recognitus atque auctus Aurelianus ex officina Eligii Gibierii. 1573.* (Mommсен's edition of the Collatio in the *Collectio Librorum iuris ante-Justinianae*, Tom. iiii., p. 110. note 2.) Blume's *Prolegomena* to the *Lex Dei*, xvi., note 5, also quotes the passage from A. Contii subseciuarum lectionum, Lib. I., c. 9 (inter opera Contii, Paris, a. 1616 edita, pp. 35, 36). *Mox idem edictum, longe integrius cum*

mentum ex integro Pauli libro singulari sub titulo quemadmodum iniuriarum agendum sit—which, the author says, was communicated by friends, and never before printed. The readings are those peculiar to Pithou's Codex, e.g. *aget* instead of *agit* (II.6.1.); *mola* instead of *mala* (II.6.4.); Numedius Nigidius instead of Numerius Negidius (II.6.5.).¹ This chapter is not found in the first edition of the *Lectiones Subsecivae* published at Leyden, 1555. Still, the whole of the MS. was probably not examined by him, as the fragments of the XII. Tables, published by him in 1572, omit the passages in the Collatio, tit. xvi., chap. 4.

Cujas had the MS. in his hands.² A printed copy of the Collatio in the Public Library at Berne contains his annotations, obviously founded on Pithou's MS., as some of his additions to, or variations from, Pithou's edition are identical with those found in that Codex.³

Pauli continua et sincera interpretatione subiiciam, ex fragmento nobis ab amico communicato, nec unquam antea typis edito . . . fragmentum ex integro Pauli libro singulari sub titulo: Quemadmodum iniuriarum agendum sit. The fragment is identical with Title II., c. 6 of the Collatio. As the first edition published at Leyden in 1555 has not this passage (Mommsen, p. 110, note 2), Blume is probably wrong when he says (*Prolegomena* p. xvi.), *Id uerum mihi persuasum ab hoc Tiliano codice etiam eum locum manasse quem Ant. Contiis publicauit, quem ex integro Pauli libro desumptum esse putabat.*

¹ Mommsen's edition of the *Collatio* as above cited, p. 110, note 2.

² Cujas' Letters to Pithou, Codex Paris, Dupuy, 700. Excerpts made by Savigny are quoted by Blume in the Preface to his edition, p. vi. P. F. Girard, at Mommsen's request, re-examined these Letters. Cujas first mentions the Collatio in a letter dated 17th October, 1570, in which he writes to Pithou asking for a loan of the manuscript, and speaks of it as a new discovery: "*Apportés nous le Licinius et le XVI. Cod. Theod.*" In the same year, apparently, when he received an Apograph of the Collatio, "*il auroit besoin d'une autre copie. qui se pourra encore trouver à mon avis. J'ai des gens en trois lieux, qui cherchent. En ce lieu des XII. tables, qui parle de agnatis et gentilibus, je l'ye. Si agnatus nec escit, gentilis familiam habeto. Haec nunc gentilitia jura in usu non sunt. J'en ai corrigé plusieurs autres et en corrigerois bien d'avantage, si j'avois l'original comme je desire bien fort le tenir quelques jours. Et l'ayant tenu et reven, vous pourrés puis après le publier ainsi que vous devisés par votre lettre.*"

Ce qui est avec le Rufinus est très bon, et la collection de tutoribus me plaît fort, etc.

1570. 15 Novemb. *Verba consultationis et rescripti ita se habent. Inter..... majoribus, etc. Je trouve bon ce lieu—c'est un ancien jeu.*

1571. 20 Januar. "*Je desire bien fort de voir l'original de votre tant bon Rufinus.*"

1573. 11 April. "*Je n'ay encore reçu votre legem Dei que vous avez fait imprimer.*"

Blume's *Prolegomena*, pp. vi. and vii. Bonn, 1833.

³ Blume, *Prolegomena* to the *Lex Dei*, as cited above, p. xix., e.g. *usque ad quartum*, title vi. chap. 2, §. 2; *non possumus* (instead of *possumus*), title vi. chap. 3, §. 1; *ex lege*, title xvi. chap. 2, §. 12.

SCALIGER'S APOGRAPH.

In the Public Library of the Leyden University, there is a manuscript numbered 61, and inscribed *ex legato illustris viri Josephi Scaligeri*.¹

Folios 105-123*a*. contain the Collatio; this Apograph, Blume tells us,² was first used by Dorville, then by Florentius Petrus Pittenius, Matthias Roever, Hermann Cannegieter, Haenel and Puggaeus. Dorville annotated a copy of Pierre Pithou's first edition of the Collatio, and, where Scaliger's Apograph differs from Pithou's text, inserted the variants from the Apograph on the margin of Pithou's edition. He apparently also added some conjectures of his own. This annotated copy is now, together with the rest of Dorville's books, in the Bodleian Library at Oxford.³

Schulting, in his edition of the Ante-Justinian Jurisprudence, used Pittenius' comparison of the printed edition with Scaliger's Apograph,⁴ and gives various readings from it.⁵

Roever and Cannegieter have quoted passages from the Apograph; the former in a critical study of some corrupt portions of the Civil Law,⁶ the latter in his commentary on the Collatio.

Haenel and Puggaeus examined the Apograph and sent their notes to Blume.⁷ It is not quite certain whether Scaliger copied

¹ Cod. Lugdun.: Scal. No. 61. Cf. Catalog. Lugduno-Batavae, ed. 1716, p. 342.

² Blume's *Proleg. to Lex Dei*, xxiii., note 1.

³ Blume gives the number in the Bodleian Catalogue as *1.*, 2. 2, 13. The present reference is "*Fragmenta quaedam Papiniani aliorumque veterum iuris auctorum* (Paris, 1573), with manuscript notes and collations. D'Orville, 334."

⁴ Scaliger in the Preface to his *Jurisprudentia vetus ante-Justinianea, editio nova*, 1737, Lipsiae. *Paululum etiam profuere mihi lectionum utriusque ex apographo viri Maximi, Josephi Scaligeri, quod in publica Academiae huius bibliotheca asservatur, quodque cum Leidensi exemplari accurate contulit quondam, dum hic studiorum causa ageret, Florentius Petrus Pittenius, etc.* Vonck also used Pittenius' comparison, as well as the Apograph itself. See his *Specimen crit. in varios auctores*, 1744, p. 37 seq., in the chapter headed *Conjectanea in Collat. Leg. Mosaic.*

⁵ Schulting's edition of the *Jurisprudentia ante-Justiniana*, pp. 940 and 941, headed: *Variae Lectiones in Mosaicarum et Romanorum Legum Collatione, Praecipue ex codice manuscripto Josephi Scaligeri, quem denotant haec litterae C. S. nonnullae ex Parisiensis editione.*

⁶ Roeveri, Matthiae, *Specimen iuridicum inaugurale ad loca quaedam iuris civilis depravata*, Lugd. Bat., 1739, and also in Oelrich's *Thesaurus I.*, I. pp. 137-192. In chap. xii., p. 179, where he discusses the *Edictum Diocletiani et Maximiani de Manichaeis*, he quotes the apograph. "*Porro sed Dii immortales providentia sua ordinare; apographo Josephi Scaligeri, extat: sed Dii immortales prudentia sua.*" Chap. xiii. is headed *Mosaicarum et Romanarum L. L. Collatio plurimis in locis emendatur ex codice Josephi Scaligeri.*

⁷ Blume's *Proleg. Lex Dei*, xxiv.

Pithou's or another manuscript. Zimmern¹ thinks that the original text was the Codex of the St. Denys' Library, referred to by Charondas. Blume is positive that Scaliger copied Pithou's manuscript. He relies first on the frequent correspondence of the notes in Cujas copy in the Berne Library with those in Scaliger's Apograph. A stronger argument is furnished by the text: almost everything which is absent from Pithou's edition and found in either the Vercelli or Vienna Manuscripts is also wanting in Scaliger's Apograph. Furthermore, in Pithou's edition, as in Scaliger's Apograph, Justinian's Novel 138 follows the Collatio and Julian's Novels precede it.

All this cumulative evidence points to Pithou's manuscript having been the original from which Scaliger made his Apograph. The difference between Zimmern and Blume may be reconciled if we assume with Mommsen² that Pithou's Codex, stated by him to have come *ex antiquissima Sequanorum aut Mandubiorum Bibliotheca*, is really identical with the one Charondas used, and which, he said, came from the *Bibliotheca Dionysiana*, i.e., from the monastery of St. Denys near Paris.

With 1576 all further mention of the manuscript ceases. It is not named in Boivin's catalogue of Pithou's Library;³ nor is it to be found in the collections of Paris, Troyes and Montpellier where other portions of Pithou's library have gone.

In 1822, two manuscripts of the Collatio were re-discovered at Vienna and Vercelli, the former by Lancizolle, the latter by Blume.⁵ Blume used them in his edition of 1833. At the auction of the Rosny Library, in 1837, many of Rosanbo's Manuscripts were sold, and amongst these was found the long lost Pithou Codex containing the Collatio. It was bought for the Royal Library at Berlin where it is now deposited.⁶

¹ Zimmern, *Geschichte des röm. Privatrechts*. Tom. i., § 7, not. 23. Quoted by Blume, *l.c.* xvii.

² Mommsen's Edition of the Collatio in the Ante-Justin. Juris. Tom. III., p. 109.

³ *Dissertation historique touchant la bibliothèque de P. Pithou*, at the end of the Life of Pithou by same writer, 1st edition, Paris, 1711. 2nd edition, with very few alterations, Paris, 1716. Finally, in epitome, in "Thou's History of His Own Times," edited by Buckley, London, 1733, Tom. vii., num. xi. p. 1-17. Also Grosley's *Vie de P. Pithou*, Tom. II., pp. 225 seq. (Blume, *Prolegomena* xxi., footnote 16). See also Haenel's Edition of Julian's Epitome, Preface, p. iv.

⁴ Blume's *Prolegomena* xix.-xxi.

⁵ *Ibidem*, xxviii.

⁶ Haenel's Preface to his edition of Julian's Epitome, p. iv.

THE BERLIN MANUSCRIPT.¹

The Manuscript is on parchment and consists of 202 large quarto folios, written by more than one hand. Each page contains at least 25, sometimes 30, and occasionally even 35 lines. On some of the pages the damp has rendered a portion of the first three lines wholly, or in part illegible. This is especially noticeable in the folios 157-169, which contain portions of the Collatio. The Codex was, from the first, a complete work, as is evident from the index of 731 chapters prefixed to it, and in accordance with which the paragraphs are continuously numbered. Folios 183 to 190 are not indexed as they are an interpolation.

The Berlin Codex contains:—

- | | |
|--|--|
| 1. Folio 1a | Six lines of theological matter. |
| 2. Folio 1b till 17a, { line 10. | Index of Julian's Epitome of the Novels. |
| 3. Folio 17a, l. 11 till { 19a, l. 17 ... | Index of the <i>Lex Dei</i> ; the rest of Folio 19 is blank. |
| 4. Folio 20a till 149b | Julian's Epitome. |
| 5. (a) Folio 149b | { Epitome of Novel 134, <i>de Vicariis</i> (Haenel's Edition of Julian, p. 192). |
| (b) Folio 151 ... | { Novel 34, <i>ut nulli liceat mutuanti</i> (Haenel l.c. appendix, p. 160.*) |
| (c) Folio 152b ... | { Summary of Novel 65, <i>de terris</i> <i>uel Domibus</i> (edited by Cujas, with commentary, <i>opp. ed.</i> <i>Neapol.</i> , vol. II., p. 1109. Pithou edited this novel in full, with the Collatio, in the edition of 1573 (p. 57). |
| (d) Folio 153a ... | { Novel 114, <i>de sacris diuinis</i> <i>subscriptionibus</i> . |
| (e) Folio 153b ... | { Novel 143 till 150, <i>de raptu</i> <i>mulierum et sponsatae</i> . |
| (f) Folio 155a ... | { Novel 138, <i>de Usuris supraduplum</i> <i>non computandis</i> , (Haenel's Julian, p. 197). Pithou edited it from the Berlin Codex, with the Collatio, in the Edition of 1573, p. 55. |

¹ Formerly *Acces. Lat.* 877, now *MS. Lat.*, fol. 269. Described by Haenel in the Preface to his edition of Julian's Epitome, iv-vi.; by Blume in *Zeitschrift für geschichtliche Rechtswissenschaft*, vol. x. (1842), p. 292 seq.; by Mommsen in the Preface to his edition of the Collatio, pp. 109 and 110.

Berlin Codex—(cont.)

| | | |
|---|---|---|
| (g) Folio 155b ... | { | Summary of Novel 121, <i>de partiaris solutionibus</i> . (Haenel's Julian, p. 197. Pithou's edition, 1573, p. 56.) |
| 6. Folio 155b, and beginning of 156a, which contains only 7 lines ... | { | Commencement of <i>de consiliariis domini Juliani antecessoris dictatum</i> till <i>qua emergerit relatas</i> (Pithou, l.c., p. 59; Haenel, l.c., p. 198). |
| 7. Folio 156b ... | | Blank. |
| Folio 157a ... | | Blank. |
| 8. Folio 157b till Middle of 182b ... | { | The Collatio with the inscription Incip. Lex Dī, and consisting of chaps. 592-732. |
| 9. Folio 183a till 190b | { | The conclusion of Justinian's Institutes (iv., 18, § 5 till end), and beginning of Digest till i. 7, l. 3. |
| 10. Folio 191a ... | | Conclusion of the <i>Lex Dei</i> . |
| 11. Folio 191a, l. 15 till Folio 194a, l. 16 | { | Conclusion of the <i>dictatum de consiliariis</i> , followed without a break by <i>Collatio domini Juliani de contutoribus</i> (Pithou, l.c. p. 63; Haenel, l.c. p. 201). |
| 12. Folio 194a, l. 17- till 199b ... | { | Novel 134 (version as in the <i>Authent. ed.</i> Heimbach, p. 127). |
| 13. Folio 199b, l. 20 ... | { | Novel 117, <i>De diuersis capitibus et solutione matrimonii</i> , preface and ch. 1 and 2; (version as given in <i>Authent. ed.</i> Heimbach, p. 112). |
| 14. Folio 200b, l. 8— 202a, l. 21, which ends the Codex. | { | <i>Passio S̄ci Gorgonii Martiris</i> , till the words <i>colligendi canes et lupi</i> . |

There are various opinions as to the age of the Codex. Pithou ascribed the entire manuscript to the 8th century¹; Blume² to the

¹ See Note next page.

² Blume, *Zeitsch. für Geschichtl. Rechtsw.* Vol. x., p. 302.

9th or 10th; Huschke to the 8th or 9th¹; Mommsen to the earlier rather than the latter part of the 9th century.² The orthography, would incline one to place it at the end of the 9th or beginning of the 10th century.³

THE VIENNA CODEX.⁴

The Vienna Manuscript No. 2160 was brought in 1822 from Salzburg to the Imperial Library of Austria, and accordingly was formerly styled the Salzburg Codex No. CCCLX. It was written by various hands, and belongs to the end of the 10th or beginning of the 11th century.⁵ It consists of 184 folios, the Collatio being written on the folios 162b–183b. Each page has 31 lines. The beginnings of titles and chapters are written in red or other distinctive colour. There are few abbreviations. Almost the only ones that occur are the following:—

- | | |
|------------------|---------------------------|
| 1. p = per. | 6. ʒ = us. |
| 2. p̄ = pro. | 7. ʃ = ur. |
| 3. p̄ = prae. | 8. {·} = est. |
| 4. qd = quod. | 9. ε = ae, e. |
| 5. ʒ = m, n, ut. | 10. ! = punctuation mark. |

The abbreviations marked 1, 2, 3, 7, 8, are also found in the Berlin Codex. In both codices, the letter I is unpointed. A frequent error is the use of accusative for the nominative or ablative. This is also a feature in the Berlin Codex. Pithou, in his edition, note 1, states that he altered 600 accusatives into other cases. *Vel* is frequently written for *ue*. The copyist follows the usual older spelling in words like *prouintia*.

The Vienna Codex contains:—

1. Epitome of the novels.
2. Justinian's novel 34,⁶ now incomplete.

¹ Huschke, in the Preface to his edition of the Collatio, *existimatur saec. octavi vel noni*. The former date would correspond with Pithou's statement about the MS. *per annos octingentos et amplius, etc.....latuerunt*.

² Mommsen, Preface to his edition of the Collatio, p. 109.

³ See Haenel in the Preface to his edition of Julian, p. iv. *Orthographia singularis est concinnit autem in uniuersum cum ea quae reperitur in codicibus exeunto saeculo IX. et primis saeculi X. lustris in Curiensi Rhaetia aut in Italia superiori scriptis, quare ego codicem eiusdem aetatis atque patriae esse arbitror*.

⁴ The Vienna MS. is described in Blume, *Proleg. Lex Dei*, xxvii.-xxviii.; by Haenel, Julian's Epitome, vi. and vii.; and by Biener, *Zeitsch. f. Gesch. R.W.*, vol. v., 1825, p. 238 *seqq.*

⁵ Mommsen in his Collatio, p. 111, gives the former century; Blume, *Proleg. Lex Dei*, xxvii., has *saeculo undecimo*; and so it is dated in the Catalogue of MSS. in the Imperial Library of Vienna.

⁶ The penultimate leaf of Quaternion XVIII. is torn out; it contained the end of Novel 34, the beginning of Novel 114 and the whole of Novel 65. The index shows that the last was in the Codex.

3. Epitome of Novel 65, now wanting.
4. Novels 114, now incomplete, 143, 138.
5. Epitome of Novel 121.
6. *Dictatum de consiliariis*.¹
7. *Collectio de tutoribus*.
8. Novel 134 (with the beginning *Quam iam uideor*).
Preface and first two chapters of Novel 117.
9. A treatise of 15 pages on Julian's Epitome, not yet printed,
beginning "*Primum et secundum capitulum non solum
innouat anteriores leges sed etiam confirmat*."²
10. Justinian's Constitution, hitherto unknown, *pro debitoribus in Italia et Sicilia*, beginning *Cum semper decursio*.³
11. fr. 12 Digest, *de testibus* (xxii. 5).
12. A passage of uncertain origin *de cecis et debilibus*. It
begins *Claudi et ceci et debiles pro furtius causa cum
ad iudicium steterunt* and ends *usque dum manifestare
studeant huius rei notitiam*.⁴

Then follows the Collatio, *Incipit legem dei*, etc. Two chapters and a half are wanting at the end of Title XVI.

THE VERCELLI CODEX.

This Manuscript, preserved in the library of the Chapter of Vercelli, and numbered CXXII., is a large quarto of 183 folios, written in double columns, each containing 29 lines. Julian's Novel 61 forms the exception, being written in single columns. There are no numbers or catchwords to the pages or quaternions. The original first quaternion is lost. The one at present in the Codex is by the same hand, but consists of foreign matter, and has 30 lines on each page. The upper margins of the last folios are damaged by damp. The rest of the Codex is almost intact. Blume, in his edition of the Collatio, gives specimens of the Manuscript, which seems to have been written by the same scribe at different periods. The Collatio from Title VI., Chapter 4, paragraph 1, *commissa sunt* is at the end of the Codex, and is preceded by the sentence *Ambrosius iudex hunc legem scrissi in hoc libro*. This sentence, according to Blume, belongs to the

¹ See Biener, *Zeitschrift für geschicht. R.W.*, pp. 341-344.

² *Ibid.*, 345-352.

³ *Ibid.*, 352-355.

⁴ *Ibid.*, 355-357.

10th or the beginning of the 11th century,¹ and fixes the date of the Codex. Abbreviations and capital letters are rare.

In place of the first quaternion,² now perished, which contained an index of the rubrics to Julian, up to Chapter CCX., there are seven folios which begin :

*Incip. nom. regionum.
et ciuitatem in quibus.
scorum apostolorum.
corpora requiescant.
Inc. Johannis Baptista filius.*

A little later there follows :—

*Incipit Expositio.
IIII Euangl.*

Under this title are given matters relating to theology and jurisprudence. Then comes the proem to Justinian's Institutes.

The second quaternion,³ beginning folio 8, contains an index of Julian's Novels, beginning Kp. CCXI. *De Abscentibus reis* till Kp. DXCII. (*sic*) *De Episcopis et monachis*. This is followed (folio 13b) by an index of the chapters of the *Lex Dei* beginning *Incipit Kapitula legis, quod praecepit Deus ad Moysen*. Then from folio 14b, Julian's Epitome begins, till Constitution CXXIV. ch. 564. The Epitome is introduced as follows : *Incipit constitutio prima nouellarum Justiniani p.p. aug. de Greco in Latino translata. Per Julianum uirum eloquentissimum antecessorem ciuitate Constantinopolitana cons. prima.*

Then from folio 150b,—the Appendix to Julian (The Constitution *quam iam uideor*), up to Constitution CXXXIII. Chap. 596, viz.:

1. Justinian's Novel 34.
2. Epitome of Novel 65.
3. Novel 114.
4. „ 143.
5. „ 138.
6. Epitome of Novel 121.
7. Julian's *Dictatum de consiliariis* to the words *lege iterum Nouellas duas constitutiones circa centesima decima relatas.*

¹ Blume on the *Leg. Langobardorum*, p. xxi., *apud* Haenel's Julian's Epitome, p. viii., note 12. *Ambrosium iudicem ciuitatis Mediolanensis et aduocatum monasterii S. Ambrosii habemus anno 892 in Fumagalli codice diplomatico*, pp. 520, 522.

² Haenel's Edition of Julian's Epitome, p. 85.

³ *l. c.*, p. 85.

- 8a. Lex IIII. DXCIII. Con.=Cod. Just. V. 71, 4. Idem AA. Mithridati. Non solum
stitutio Metridiati. Pupil- per uenditionem rustica
lis uel adultis res suas nec praedia uel suburbana
uindi nec donari uel com- pupilli uel adulescentes
mutari licet nec cum fratre alienare prohibentur, sed
suo. neque transactionis ratione
neque permutatione et
multo magis donatione nec
alio quoquo modo ea trans-
ferre e dominio suo
possunt. igitur et tu si
fratribus tuis per transac-
tionem fundum dedisti *cet.*
- b. DXCIIII. lex I. Imp.=Cod. Just. V. 71, 1. Imp. Antonino A. Muciano. Antoninus A. Muciano.
Minor quod absque tutore Venditio quidem praedii,
uel curatore uindedit uel quod iure pignoris
obligauit, dum ad legiti- distractum est, ad senatus
mam etatem uenerit, resti- consultum, quod de alien-
tuitur illi. andis praediis pupillorum
ue adulescentium
factum est, non pertinet.
sed si etiam nunc in ea
aetate es, cui subueniri
solet, aditus competens
iudex, an te in integrum
restituere debeat
dispiciet.
- c. DXCV. De donatione.=Cod. Theod. VIII. 12, 1, *ad*
Donatio directa est, ubi in *summam Aegidianiam*
presenti res dona (*scr. dona-* (breuiar. p. 156, Haenel).
ata) traditur. quod si dona-
tor quartam sibi non reser-
uauerit, donatio non ualebit.
- d. DXCVI. Si seruus sciente=Coll. XIV., 2, 3.
domino alienum seruum
substraxerit uindiderit ce-
lauerit, in ipsum dominum
animaduertitur, quod si id
dominum ignorante com-
miserit, in metallum datur.

9. A glossary which begins :

seua | *crude prestolatur expectetur avidus* | *cupidus*
and ends :

sciscitantes | *interrogantes*.

Julian's collection and its appendices are followed by a treatise *De Incestis* belonging to Moral Theology rather than to Jurisprudence. This is succeeded by a table of grades of cognation. A later hand has added Rotharith's Law CLIII. and the words *Omnis parentela . . . quomodo nos dicimus, ambrosius iudex hunc lege scrisi in hoc libro*. At the back of the folio containing Ambrosius' note, 157 b, begins the Collatio. It fills 24½ folios and ends with Title XVI., Chapter 3, § 13. The last word is *pertineri*. Then come notes on Jurisprudence and Ethics. The Codex concludes with the text from the Book of Proverbs : *Melius est uocare ad holera cum caritate quā ad uitulū faginatū cū odio*.

There are also several notes written on the margin and between the lines of the text.

The following are inserted in the Collatio :—

1. Title I., chap. 7, on the margin at the foot of the page (Cod. Just. IX. 16., 6.):

Impr̄. Justin̄. A. si quis cū telo ambulauerit hominis negandi causa, sicut his qui hominē occiderit pena subiacet.

2. Title II., chap. 5, on the upper margin above the page (=Pseudo-Eleutherius, Vol. I., p. 696, Mansi):

Judici non est sine accusatore dampnare, quia et dñs Judas, cū fur esset, quia non est accusatus minime abiecit.

3. Title IV., chap. 2, on the upper margin :

* [*Omnia ergo que*] *aduersus absentes in omni negotio aut loco aguntur* [*aut iudicantur, om*] *nino Vacue(n)tur quoniam absentem nullus addicit nec ulla lex dampnat. facile ergo homo hominem* [*fallere potest non*] *tamen deum cuius oculis omnia nuda sunt et aperta. Unde ait propheta: dominus nouit cogitationes hominum quoniam uane sunt.*

* Huelsen examined the Codex for Mommsen and reported that what is included in brackets is almost faded. (Mommsen, l. c., p. 111).

On the lower margin :

Kp. Clerici qui in quacunque seditione arma uolentes sumpserint, reperi amisso ordinis sui gradu in monasterio paenitentia retrudantur.

4. Title XII., chap. 1. :

Fabor | S(cilicet) laus uel auxilio.

5. Title XIV., chap. 1. :

In Terptatio [= interpretatio] Plagiarius est, qui hominē liberū rapit et uendit.

6. Title XIV., Chap. 2 :

After the words *item pronepotes*, when the Codex begins chapter CXXVIII., occurs the direction inserted in the text: *require post capitulum CXXX^{mo} IIII^o* (which is the last in the book) *capitulum C^{um} XXXV.* The reason is the dropping out of the passage XVI.2.8 *si ex duobus* till XVI.2.10 *matrem eandem habuerint item.* It was at the end of the text which the copyist used, but he forgot to transfer it.*

There are many points of similarity between the Vienna and Vercelli Codices.

1. The number of folios. The Vienna has 184; the Vercelli 183.
2. Both Codices are large quarto.
3. There are double columns.
4. Julian's Epitome is divided into two parts.
5. The numbering of the Constitutions in both is often wrong.
6. Each contains an Index to the Rubrics of Julian.
7. Both have Interlinear and marginal annotations, and
8. An Appendix to the Epitome.

* In addition to the Three Codices, a fragment of the Collatio, Title I., chap. 7, introduced with the prescription *de homicidio qui aliquando absoluuntur aliquando damnantur. Iustinianus Rex* is found in a MS. collection of canons written in the 11th century in Upper Italy (Vallicelliano B. ii.; Vatican, n. xliii. 39; and Monte Casino, n. ii., 16). The Codex Bellouacensis (Beauvais), now in the Paris Library, n. 9652, formerly suppl. Lat., 779, belonging to the ninth century (Haenel, preface to the Post-Theodosian Novels, p. 14), has, on the last folio (p. 164), after a paragraph of Alaric's Breviary, the beginning of Collatio Title X., with the superscription x. *de deposito*.

9. The numbering of the chapters in Julian's Epitome and in the *Lex Dei* is continuous.
10. The orthography and abbreviations are alike.
11. They both belong to the same century, though the Vienna Codex is later.
12. The same subscriptions are sometimes missing in both.

Some items are peculiar to the Vercelli MS., e.g.:—

1. The subscriptions to the Constitutions 85, 86, 89, 90, 92, 101, 102, 119.
2. Chap. XI., Decrees of the Pope Gelasius.
3. Some chapters of the acts of the Fourth Council of Toledo and the acts of the Fourth Council of Carthage.

The Collatio and the other elements common to the Berlin, Vienna and Vercelli Codices render it highly probable that they all emanate from one and the same source.¹ The probability is raised to a certainty on a comparison of the Collatio in the three Manuscripts.

The Collatio is more complete in the Vienna than in the Vercelli Codex, and most complete in the Berlin Manuscript, though the last lacks words which are to be found in the other Codices. Certain lines, however, sometimes up to the same word, are missing in all three copies. The conclusion of the Collatio is obviously defective in the Vienna and Vercelli Manuscripts. Whether even the Berlin Codex, which is fuller, presents the Collatio in its entirety is doubtful. A point of difference is the Chapters. The Titles are fairly uniform. But the divisions into chapters, as well as the number and beginning of each chapter were apparently determined by each scribe, arbitrarily and without any fixed principle. Thus, in the Berlin Codex, *idem* in the middle of a sentence, Title XII., Chap. 7, § 8, afforded the copyist ground for beginning a new chapter. So also in Title XVI., Chap. 3 § 3 starts a new chapter because of the word *continuat*. In the Vercelli Manuscript, Title XI., Chap. 8, § 1, begins a new chapter on account of the phrase *et cetera* which the scribe wrote for *et ceterum*.

¹ Mommsen (*l. c.*, p. 114) thinks that the Vienna Codex is nearest the Archetype.

With such carelessness on the part of the scribes, there is no cause for wonder that the Chapters do not coincide.¹

OF THE EDITIONS OF THE COLLATIO BEFORE BLUME.

Blume notes 20 Editions of the Collatio before his appeared in 1833. The text of the Collatio has been edited separately three times, viz. in 1573, in 1574 and in 1656: about a dozen times together with other sources of Roman Law; viz. with the Theodosian Code and other portions of the Ante-Justinian Jurisprudence in 1586, 1593, 1607, 1815; with the Ante-Justinian Jurisprudence in 1672, 1717, 1737, 1744; with Ulpian in 1768; with Julian, among Pithou's observations to the Code and Novels in 1689. The earliest in this class is Stephanus' Edition in his *Juris Ciuilis Fontes an Riui*, which, however, omits other works now included in sources of Roman Law. Five times the Collatio has been edited together with works on sacred subjects, viz., with the *Lex Moralis*

¹ Blume, who compared the Vienna and Vercelli Codices, gives the following comparative tables of Chapters for the Collatio:—

| VIENNA. | VERCELLI. | VIENNA. | VERCELLI. |
|-----------|-----------|-------------|-----------|
| Chapters. | Chapters. | Chapters. | Chapters. |
| 1 — 13 | 1 — 14 | 103 — 113 | 109 — 118 |
| 14 — 27 | 15 — 29 | 114 — (115) | 119 |
| 28 — 33 | 30 — 36 | 116 — 119 | 120 — 124 |
| 34 | 37 — 38 | 120 — 124 | 125 — 128 |
| 35 — 51 | 39 — 56 | 125 — 126 | 129 |
| 52 — 66 | 57 — 72 | 127 | 130 — 134 |
| 67 — 89 | 73 — 96 | 128 — 132 | wanting. |
| 90 — 102 | 97 — 108 | | |

Mommsen, in the Introduction to his edition of the Collatio, p. 121, illustrates this discrepancy between the Codices by a comparative table of the chapters in Title XI. *de abactoribus*.

| At the beginning of title. | Berlin. | Vercelli. | Vienna. |
|---|-----------------|-----------------------|---------------|
| <i>before incipit</i> | kp. DCLXXX. | kp. LXXXVIII. | kp. LXXXIII. |
| .. c. 2 | kp. DCLXXXI. | kp. LXL. ⁴ | kp. LXXXIIII. |
| .. c. 3 | kp. DCLXXXII. | kp. LXLI. | kp. LXXXV. |
| .. c. 4 | kp. DCLXXXIII. | kp. LXLII. | kp. LXXXVI. |
| .. c. 5 | kp. DCLXXXIIII. | kp. LXLIII. | kp. LXXXVII. |
| .. c. 6 | kp. DCLXXXV. | kp. LXLIIII. | kp. LXXXVIII. |
| .. c. 7 | kp. DCLXXXVI. | kp. LXLV. | kp. LXXXVIII. |
| .. <i>sed etiam</i> ¹ | — | kp. LXLVI. | — |
| .. <i>eodem re-scripto diui Hadriani</i> ² | kp. DCLXXXVII. | kp. LXLVII. | kp. XC. |
| .. c. 8. | kp. DCLXXXVIII | kp. LXLVIII. | kp. XCI. |
| .. <i>si quis bouem</i> ³ | — | kp. LXLVIII | kp. XCII. |

¹ Tit. II. 7. 4. ² Tit. II. 7. 5. ³ Tit. II. 8. 1. ⁴ LXL. in this manuscript, here and elsewhere for XC.

of Th. Beza 1603; in Pithou's *Opera Sacra* 1609; *Critici Sacri*, London, 1660, Vol. VIII.; Frankfurt 1696, Vol. VIII.; Amsterdam, 1698, Vol. I., Part II., columns 193-248. Pithou's first edition was published in Paris after the massacre of St. Bartholomew. The editions may be placed under three categories. The first consists of those that closely follow Pithou's first edition; viz.: the Basel edition, 1574, and the five Collections of Sacred Law to which reference has been made above. For although the Editors all claim that they have corrected Pithou's notes, the emendations apply exclusively to typographical errors, some of which had been corrected by the Basel Editor. The second category consists of editions which more or less disregard Pithou's edition, even in the context, and either altogether omit his notes or give them with additions. Such are the editions published at Geneva, Leyden, Heidelberg and Lyons. The third category consists of editions which do not lightly overthrow the authority of Pithou's Manuscript, but wherever possible, correct its errors in the notes. Stephanus, Cujas, Schulting and Biener have worked on these lines. In this class must also be included the Paris Edition of 1689 which contains the notes of Pierre Pithou and of his brother, augmented from the Pelletere Library.

Of Commentaries there are altogether four, those of Pithou, Schulting and the two by the Cannegieters, Joseph and Hermann. Hermann Cannegieter gives the correct references to the texts taken from the Pentateuch.

A list of Authors who have worked at the Collatio is given in the Appendix. Since Blume, Huschke and Mommsen have edited the Collatio; Dirksen and Rudorff have written dissertations on it.

TITLE AND PLAN OF THE WORK.

THE current designation is *Collatio* or *Pariatio Mosaicarum et Romanarum Legum*.¹ This title cannot be traced to the Compiler, nor is it found in the Codices. It originated with the first editors and their contemporaries.²

The compilation has also been called *Fragmenta Pithoei*,¹ after their re-discoverer. It is sometimes styled *Lex Dei*¹ from the opening words.

The plan of the Compiler is to give texts from the Pentateuch followed by passages from the Roman Law bearing on the same topics.

There are 16 Titles, viz.: 1. Concerning Murderers; 1a. Accidental Homicides; 2. Aggravated Injuries; 3. Cruelty to Slaves; 4. Adultery; 5 and 6. Other Sexual Offences; 7. Theft; 8. False Testimony; 9. The Inadmissibility of the Testimony of Relatives; 10. Deposit; 11. Cattle-raiding; 12. Arson; 13. Removal of Landmarks; 14. Kidnapping; 15. Sorcery and other Forbidden Arts; 16. Statutory Succession.

The topics are not selected haphazard. The titles correspond to the Second Half of the Decalogue. Titles I. and 1A correspond to the Sixth Commandment, "Thou shalt not kill." Titles II. and III. are corollaries. Titles IV., V. and VI. correspond to the Seventh Commandment, "Thou shalt not commit adultery." Title VII. to the Eighth Commandment, "Thou shalt not steal." Titles VIII. and IX. to the Ninth Commandment, "Thou shalt not bear false witness against thy neighbour." Titles X.-XV. exemplify various forms in which the infraction of the Tenth

¹ The superscription in all the MSS. refers to the work as *Lex Dei*. The Vienna MS. begins Title IV., *Incipit de adulteris constitut. iiii de Legem Moysi*. Schulting, in a note to Paulus, v. 23, § 9, calls the book *Lex Dei*. Charondas, in Notes on Justinian's Code (xv. Note 3), and Cujas also refer to it as *Fragmenta Pithoei* or *Fragmenta a P. Pithoeo edita*. Another title adopted by editors is *Collatio Legum Mosaicarum et Romanarum*. Stephanus, in his edition 1580, and Cujas, in his edition 1586, name it *Lex Dei siue Mosaicarum et Romanarum legum vetus Collatio*. In the Geneva Edition 1586, it is called *Collatio legum Iudaicarum et Romanarum*. Marcilius, in his *Leges XII. Tabularum Collecta et Interpretamentum* (Paris, 1600; also in Otto's *Thesaurus*, 1733, Tom. iv., chap. 56) calls it *Legis Mosaicæ Pariatio siue comparatio*. Heineccius (*ad leg. Jul. et Pap. Popp.*, lib. ii., chap. 7, p. 190) styles it *Pariator legum Mosaicarum et Romanarum*. See Blume, *Proleg.*, l. c. vi., vii.

² See Schulting, Notes to the Collatio, 1, 1, note 1; Blume, *l. c.*, p. x. and in the *Zeitschr. f. Gesch. R. W.*, x., p. 308.

Commandment, "Thou shalt not covet," may be manifested. Title XVI., "Of Intestate Successions," stands in a separate category. With the exception of this last and of Title IX, which is a pendant of, and closely connected with, Title VIII, they all treat of such wrongs to private individuals as are punished by the State.

The last title "Of Statutory Successions," belongs to a division of private law where intervention of the public authorities is called for, owing to a failure of testamentary disposition. Whether this title forms the conclusion of the book or whether it was intended as the beginning of the second part of a larger work now lost it is impossible to decide. Huschke and Rudorff think that the XVIth title completed the work.¹ Mommsen holds that it begins a new division no longer extant, and that the work, as we have it, is incomplete and fragmentary.²

The Collatio opens: *Incipit lex dei quam deus precepit ad Moysen.*

This superscription cannot be regarded as descriptive of the entire work; for then it should have been completed by some such clause as *et lex Romana quomodo conueniunt*. Mommsen regards the whole line *Incipit . . . Moysen* as an interpolation by a later hand.

Hincmar,³ quotes the Collatio under the general designation of *Leges Romanæ* and also with the phrase *primo libro legis Romanæ*, possibly because it stood first in a Codex of Roman Law, or because his Codex had the words *liber primus* at the beginning of the Collatio.

The titles into which the Collatio is divided are introduced by superscriptions and subscriptions. Do these form part of the original work, or have they been added by a later hand?

¹ Huschke in the last note to the Collatio (p. 705, note 11) in his edition of the ante-Justinian Law: *Ceterum hæc sententia tam apte in fine huius materiae posita est, ut ea ipsa hunc titulum finiuisse Collationis auctor existimandus sit.*

Rudorff in his Essay, *Ueber den Ursprung und die Bestimmung der Lex Dei oder Mosaicarum et Romanarum legum collatio* (pp. 279, 280), after speaking of certain laws of Constantine and Leo, says: *Diese Gesetze aber beginnen mit der Intestaterbfolge, mit welcher die Collatio im sechzehnten Titel de legitima successione abschliesst.*

² Mommsen appends to his edition: *reliqua desunt.*

³ Hincmar, *Opp. ed. Sirmond*, Tom. i., p. 627, *Unde et leges Romanæ decernunt in capitulis de stupratoribus*, and again *ibidem*, p. 634: *Sicut in primo libro legis Romanæ capitulo sexto de stupratoribus et in capitulo septimo de incestis et turpibus nuptiis.* See Savigny, *Geschichte des römischen Rechts im Mittelalter* 2^a, p. 282. See also discussion on quotation from Hincmar at the beginning of the previous Essay.

They are certainly older than the ninth century, for Hincmar, who wrote about 860,¹ quotes *de stupratoribus* and *de incestis nuptiis* in the same order and under the same rubrics as they are found in the MSS., though as we have seen, he numbers them sixth and seventh instead of fifth and sixth.

This is certain, that the division into titles lay in the original plan of the work. The titles, as a rule, begin with texts from the Pentateuch, which distinctly point to the subject matter that follows. To this rule there are but three exceptions. Title I. chap. 5, and Title VI. chap. 5 commence with Biblical texts which do not begin titles; and the Scriptural text at the beginning of Title VII. is introduced with a reference to the XII. Tables.

There is another indication of the division into titles. Where the same source is quoted more than once in the same title, the second and succeeding excerpts are preceded by such phrases as *Item* or *Idem* (IV. ch. 9 and 10); *idem sic* (IV. 11); *idem eodem libro et titulo* (VIII. 6); *Ulpianus libro et titulo qui supra relati* (I. chap. 6); *Paulus libro et titulo qui supra* (I. chap. 7); *Item Paulus libro qui supra et titulo* (I. chap. 4); *Idem eodem libro* (XVI. chap. 6, 7, 9); *Idem libro qui supra* (XVI. chap. 8). But where a new title begins, excerpts have always a complete superscription with the name of the author and title of his book, even where the previous title concludes with a quotation from the same work. This principle is consistently carried out (Cp. Title IV., chap. 12, with Title V., chap. 2; Title VI., chap. 3, with Title VII., chap. 2; Title XI., chap. 7, with Title XII., chap. 5; Title XIII., chap. 3, with Title XIV., chap. 3).

The application of this principle settles the question whether Title IX. is to be regarded as the conclusion of Title VIII. This view is favoured by the subscription at the end of Title IX. in the Vienna MS—*Explicit de falso testimonio*—which corresponds with the superscription to Title VIII. In the Berlin M.S., however, the subscription to Title IX reads:—*Explicit titulus de familiaris testimonium non admittendo*. But the crucial test is the fact that at the beginning of Title IX., an excerpt is given from Ulpian, introduced with name of author and title of work, set out in full, though both are already quoted at the conclusion of Title VIII. Hence it may be concluded that we have here two separate titles. And, in fact, they treat

¹ Duemmler: *Geschichte des Ostfränkischen Reichs*, I., p. 457,

of different topics. Title VIII. discusses the penalties attached by the *Lex Cornelia Testamentaria* to False Testimony. Title IX. enumerates the degrees of relationship to which the *Lex Julia de Vi* granted exemption from giving evidence, and also states the grounds for suspecting the truth of testimony tendered.

The superscriptions are based on the headings to the principal quotations from the Roman Law cited in the titles, usually the first but sometimes a later one.¹ Two Titles (VIII. and IX.) are exceptions. The superscriptions to these adequately express the contents, but are not found in the headings to the excerpts. The superscriptions and subscriptions are generally but not always identical.² The variations are slight, and may be due to copyists.³ The subscriptions are regarded by Mommsen as additions by a later hand. He therefore omits them in his edition.

The texts from the Pentateuch are given in condensed form, as the compiler's object was not to quote the scriptural texts literally, but only to reproduce their substance. They are not taken from Jerome's Vulgate, but either in a free translation from the Septuagint, or from the Itala,⁴ properly styled the *Vetus Latina*.

The phrase *sicut lectio manifestat* (Title VII., chap. 1) would point to the Itala which was in common use. Mommsen also, in his edition of the *Collatio* (pp. 131-134) sets forth texts in Augustine's *Speculum* and the ancient Lyons and Würzburg Codices, which show an agreement in style between the Itala and the *Collatio*.⁵ Hincmar, in quoting the *Collatio*, gives the full

¹ Cp. superscription of Title iii., *De iure et saevitia dominorum*, with heading to iii. 3. *Ulpianus.....de dominorum saevitia*; superscription to Title vii., *De furibus et de poena eorum*, with heading to vii. 4. *Ulpianus de furibus*; superscription to Title xiii., *De termino amoto*, with heading to Title xiii., *Ulpianus.....de termino moto*. The superscription to Title xv., *De Mathematicis, Maleficis et Manichaeis* combines part of the heading to xv. 2, *Ulpianus.....de Mathematicis et Vaticinatoribus*, and the whole of the ending to the heading of xv. 3, *Gregorianus.....de Maleficis et Manichaeis*.

² Cp. Title III., *Incipit: De iure et saevitia dominorum; Explicit: De dominorum saevitia cohibenda*. Title VI., *Incipit: De incestis nuptiis; Explicit: De adulteris, stupratoribus et incestis nuptiis*. This last named subscription combines the rubrics of Titles IV., V. and VI.; Title VII., *Incipit: De furibus et de poena eorum; Explicit: Titulus de furibus*. Title XV., *Incipit: De Mathematicis et Manichaeis; Explicit: De Mathematicis, Maleficis et Manichaeis*.

³ Blume, *Zeitschrift für Rechtswissenschaft*, Bd. X., p. 303.

⁴ The Itala was the version in use before Jerome's translation, and was made from the unrevised edition of the Septuagint (See Smith's "Dictionary of the Bible," pp. 3453, 3454).

⁵ See Appendix, pp. 151-158. This was already noted by Blume and earlier editors. There is an extract from Venema's study of these texts in H. Cannegieter's *Comm. ad Fragmenta Veter. Jurisprud.*, p. 5. See also Fr. Münter: *Specimina Fragmentorum Version. Antiquar. in libris jur. et Rom. et Can. Miscellanea Hafn. theolog. et philolog. argumenti*. Tom. II., p. 89, Hafn., 1824. Quoted in Blume.

scriptural texts from Jerome. The real reason why the Vulgate was not used is because it had not yet been adopted as the authorised version of the Church. While the Septuagint was, at a very early period, invested with canonical authority,¹ the use of the Vulgate by the clergy cannot be traced back beyond the 6th century;² and it was not till 1546 that the Council of Trent, in its fourth session, made its exclusive use obligatory in the Roman Church.³

The texts from the Pentateuch are placed first as being the expression of the Divine will. But there is no intention to give a detailed exhaustive exposition of the whole of the Mosaic legislation, or even of its jurisprudence. Single texts only are given, and these are frequently not fully set out.

The topics treated in the *Collatio* are all contained in Exodus, chaps. xxi. and xxii. But not all the topics found in these chapters are referred to in the *Collatio*. There is, for example, no reference to the emancipation of Hebrew slaves after six years' service, the subject with which Exodus, chap. xxii. opens. The reason of the omission may be that the treatment of slaves in the Roman Law fell below the standard of humanity enjoined in the Mosaic

¹ *Augustine De Civitate Dei*, XVIII., chap. 42, at the end. After recounting the legend that the seventy translators, though in separate rooms, gave the same version of the Bible, the Bishop of Hippo concludes: *et ideo tam mirabile Dei munus acceperant, ut illarum scripturarum, non tamquam humanarum, sed sicut erant, tamquam divinarum, etiam isto modo commendaretur auctoritas credituris quandoque gentibus profutura, quod iam videmus effectum.*

² "At first Augustine thought the new version of the Old Testament (Jerome) too revolutionary, and almost to the end of his life clung to a belief in the inspiration of the Seventy. He wrote of Jerome's translation, however, with increasing respect, and occasionally quotes from it (e.g., *De Civitate Dei*), and in his last work, the genuine *Speculum* (a collection of Biblical extracts left unfinished at his death in 430), he follows the new version wholly, except where he quotes from memory. In the 6th century, Cassiodorus seems to have treated the two versions on an equal footing, but Isidore of Seville in the 7th century uses Jerome exclusively. From that time it really deserves the name "Vulgate," now universally applied to it, though, as a matter of fact, it was not so called before the time of Roger Bacon. In Jerome's own works *Vulgata* means the "Old Latin" (Hastings' Dict. Bible, col. 5,024, 5,025).

³ The Fourth Session of the Council of Trent, held on the 8th day of the month of April, in the year MDXLVI. "The Canons and Decrees of the Council of Trent." London, 1848, p. 19.

The *Acta Concilii Tridentini*, published at Antwerp, 1546, pp. 92, 93: *Decretum tertiæ (sic) sessionis Concilii Tridentini, quæ celebrata fuit quinta Aprilis eodem anno. Insuper eadem sacrosancta Synodus considerans nō parā utilitatis accedere posse ecclesiæ Dei, si ex multis Latinis editionibus, quæ circumferentur sacrorum librorum, quænam pro authentica habenda sit, innotescat: statuit et decrevit ut hæc ipsa vetus et vulgata editio quæ longo tot seculorum usu in ecclesia ipsa probata est, in publicis lectionibus, disputationibus, prædicationibus, aut expositionibus, pro authentica habeatur, et quod eam nemo reiicere quovis prætextu audeat vel præsumat.*

Code. The biblical examples of the *Lex Talionis* are omitted, probably for the opposite reason. Roman Law, at the time of the Collatio, had outgrown the crude early doctrine, just as had the rabbinic¹ legal development, which interprets "eye for eye," and "tooth for tooth" as meaning monetary compensation. Though there is abundant material in the Pentateuch from which a catena of passages might have been drawn for each of the topics of the Collatio, the compiler has chosen to place at the head of each title a single scriptural text—that which seemed to him the fittest parallel to the principle of Roman Law he was expounding. In two cases, he gives texts in the middle of Titles. Title I., chap. 5, continues the text in Title I., chap. 1., and Title VI., chap. 7, § 1 repeats the substance of the text in Title VI., chap. 1. In the former case, the scriptural verse is an apt introduction to the corresponding rules of the Roman Law which follow. In the latter case the text at the beginning of the title is included in an altered form with other texts placed at the end of the title in order to emphasize the heinousness of incestuous unions.

The topics and their arrangement were, as already remarked, suggested by the second half of the Decalogue, and do not follow either the order in Exodus xxi. or in Leviticus xviii. and xx. What is joined together in the Pentateuch is broken up in the Collatio, if this will better serve the governing principle of comparison with the Roman Law. Thus, Breach of Trust and Injury to Property are joined together in the Pentateuch, Exodus xxii. 1-13; in the Collatio they are distributed under Titles VII., X. and XII. So, too, the rules concerning Testimony are divided in the Collatio under Titles VIII. and IX.

The excerpts from the Roman Law are taken from the Five Jurists and from the Hermogenian and Gregorian Codes. Papinian's writings are used sparingly, except in Title IX., where numerous extracts are cited from his *Liber Singularis de adulteriis*. Of Paulus' works, the *Libri Sententiarum* are cited, and Ulpian is represented exclusively by his *de officio proconsulis*. The Compiler aimed at the inclusion of those

¹ Babylonian Talmud, *Baba Kama*, 83b. and 84a., in the discussion on the Mishna, *ibid*, chap. viii., § 1: "If one inflicts physical injury on another he has to pay compensation for five things: actual damage, pain suffered, cost of medical treatment, loss of employment, humiliation."

² See Sources of Roman Law, in Appendix, pp. 277-280.

passages which pregnantly represented actual practice. Hence, the special attention paid to Paulus' *Sententiae*.¹ The Compiler referred to the latest Constitutions² (Title XIV., chap. 3, § 6). He also gives (Title V. 3), a Constitution of Valentinian, Theodosius and Arcadius, which is contained in the Theodosian Code (IX. 7, § 6) in a mutilated form (from *omnes quibus flagitii*) and with a different subscription.³ The Constitution is preceded in the Collatio by an introductory paragraph ending with the unusual phrase *Item Theodosianus*. Though opinions have varied in the past, it is now accepted that this Constitution was not taken by the Collatio from the Theodosian Code.⁴

Godefrey (Gothofred),⁵ in his commentary on the Theodosian Code *in loco*, suggests that the Constitution was taken by the Compiler of the Collatio from the Theodosian Code, in which it originally stood, as is shown by the phrase *Item Theodosianus*; that it afterwards dropped out of the MSS. of the Code and was re-inserted in a shortened form taken from Alaric's Breviary.

Huschke⁶ argues from the fact that the compiler uses the Gregorian and Hermogenian Codes as regular sources, while

¹ See Theod. Cod., I. 4, § 2. *de resp. prudent.*; where Constantine speaks of Paulus' *Sententiae ad filium* as *libros plenissime luce et perfectissima elocutione et iustissima iuris ratione succinctos*. They came to be called *Receptae Sententiae*, because, though Paulus first wrote them for the instruction of his son, their excellence brought them into general use.

² *Ex nouellis constitutionibus*. This, according to Huschke, refers to Constitutions of Diocletian and Maximian, 287 (Cod. Just., IX. 20, § 7), and of Constantine, 315 (Cod. Theod. IX., 18), (Cod. Just. IX. 20, § 16).

³ Pp. in *foro Traiani*, VIII., Id., Aug. Valentiniano, A. IV. et Neoterio Coss, instead of *Prop. pr. Maías Rome in atrio Minervae*.

⁴ Pithou is doubtful as to the source. Note i., 1: *Illud potius mirer, cur hic idem de impudicis legem non ex Praefecturae scriniis, sed ex Theodosiano Cod. pleniorum recitat quam hodie in corpore ipso extet.....* (Note on v. 3) *sunt haec aut collectoris aut alterius cuiusdam qui haec postea ex Theodosiano adiecit, uel potius ex Praefecturae urbanae archiuis. Nam in ipso codice haec constitutio breuius relata est.*

⁵ Godefrey says that the phrase "item Theodosianus" proves that the constitution was taken from the Theodosian Code, from which it afterwards dropped out, and in which it was re-inserted in a shortened form:

Extat autem haec lex praefatione et epilogo apud Authorem coll. ll. Mosaicarum tit. de stupratoribus..... Quo argumento liquet ut multas alias constitutiones, ita et hanc quoque legem nostram ab Alaricianis decurtatam. Id enim uerius est quam ut credamus (quod suspicabatur V.C. Pithoens) ex Praefecturae Urbanae scriniis a collectore illo, uel ab alio, hanc legem ita plenius relata. Aperte enim, ex Codice Theodos. eam allegat author seu Pariator ille Item, inquit Theodosianus.

⁶ Huschke (*Zeitschrift für Geschichtliche Rechtswissenschaft*, Bd. XIII., pp. 3-6), Haenel (*Edition of Th. Cod.*, ix. 7, 6.), and Mommsen (*Edition of Collatio*, p. 127) are certain that the compiler did not know the Theodosian Code.

apart from this passage, he only refers to the Theodosian Code once again (cp. *Sciendum est ex nouellis constitutionibus*, Title XIV., at the end with Th. Cod., IX. 18), that the quotation here was not taken from that Code.

Item Theodosianus is accordingly a later addition by a scribe who found the Constitution in the Code, and thought a reference to it should be inserted in the Collatio. The phrase *Item Theodosianus* instead of *Theodosius in Libro IX.*, is not in the style of the Collatio. Finally, the different subscriptions show that the Constitution was taken in the two works from different sources.

Haenel¹ and Mommsen¹ agree with these views, and the latter edits *Item Theodosianus* as an interpolation.

The Gregorian and Hermogenian collections of Constitutions are used equally. There is the same number of extracts from each. But citations from the Gregorian Collection occur in five titles: those from the Hermogenian only in two titles. Extracts from both are given near each other, as is indeed also the case with the Vatican fragments (266a, 270, 272).

The texts from the Jurists and Codes are quoted faithfully and exactly.² The source and date of each extract are carefully stated in the superscription and subscription respectively. Title VI., chap. 5, quotes one of Diocletian's Rescripts from the Hermogenian Code, followed by a statement (VI., 6, 1) of the variation in its date, as given in the Gregorian Code. Occasionally, however—as in Title V., chap. 3; Title X., chap. 5; Title XV. chap. 3, § 8; Title VI., chap. 4—Constitutions are quoted without naming the Emperors under whom they were issued. As regards the first of these exceptions, Huschke³ thinks that this Constitution of Valentinian, Theodosius and Arcadius had only just been issued; hence the Emperors are not mentioned in the subscription.

Where the Compiler begins a passage but does not complete it, he adds the phrase *et reliqua*. The instances are Title I., 3, § 1; I., 12, § 1; II., 2, § 1; IV., 3, § 6; VII., 3, § 4; VIII., 7, § 3; IX., 2, 3.

In two cases (Title VII., chap. 1, and Title XIV., chap. 3, § 6) the Compiler does not quote verbatim, but only gives the sense of

¹ See note 6 of previous page.

² Cp. Gaius iii. 5 with Collatio xvi. 2, and Ulpian Fr. xxvi. with Collatio xvi. 4

³ *L.c.*, p. 7.

the passages or a summary of their contents. This he clearly indicates.

Excerpts from the Jurists usually precede those from the Constitutions. But there are exceptions to the rule. Thus in Title Ia. *De casualibus homicidiis*, excerpts from Ulpian (chap. 6) and Paulus (chap. 7) are followed by rescripts from the Gregorian Code (chaps. 8-10), which, in their turn are succeeded by extracts from Ulpian, Modestinus and Paulus. Apparently, this order was chosen, because it exhibits more clearly the parallelism between Roman and Mosaic Jurisprudence. Title VI. gives an extract from the Constitutions and then one from the Jurist Papinian, because the former discusses the whole principle of the law, the latter only a single point.

The Compiler's own remarks deserve notice. Beside the rubric at the beginning of the work, *Incipit lex dei quam dominus (s. deus) dedit ad Moysen*, which Dirksen and others regard as part of the original text, while Mommsen thinks it a later addition, the formularies introducing the scriptural texts, *Moyses dei sacerdos haec dicit* (I. 1.); *Moyses legaliter dicit* (I. 5); *Moyses dicit* (IV. 1); *Moses dicit* (V. 1); *Lex diuina sic dicit* (VI. 7); *Scriptura diuina sic dicit* (XVI. 1), set up a claim of divine authority for the Law of Moses.

A passage at the end of Title V. chap. 2 gives expression to the Compiler's aspiration that the Mosaic Law should serve as a norm for Roman Legislation. After concluding his quotation from Paulus' *Sententiae* on the punishment of pederasty, which was only capital when both participants were consenting parties, the compiler adds: *Hoc quidem iuris est, mentem tamen legis Moysis Imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. The writer thus approves the wholesome stringency of the Mosaic Law, censures by implication the ancient *jus*, which he contrasts with the Imperial Legislation,¹ and praises the latter for reflecting the spirit of the Pentateuch. The Emperor's Constitutions are to correct the want of harmony between the Roman and the Divine Law.

Characteristic also is Title VI., which speaks of Incest. After

¹ A modification effected by a Constitution in the penalty meted out by the ancient *jus* is referred to in Title xiv., chap. 3, § 6, on Kidnapping. A quotation from Ulpian concerning the *Lex Fabia de plagiariis* is followed by this statement: *Sciendum tamen est ex nouellis constitutionibus capitali sententia pro atrocitate facti puniendos; quamuis et Paulus, relatis supra speciebus, crucis et metalli huiusmodi reis irrogauerit poenam.*

quoting a scriptural text, prescribing death for forms of the offence, followed by passages from the Roman Jurists and Constitutions, which show no correspondence with the Mosaic Law in regard to the penalties, the Compiler furnishes a second and complete *résumé* of the Pentateuchal maledictions on Incest, prefaced by the statement: *idem dicitur in eos qui incestas nuptias contraxerunt. maledicti tamen sunt omnes incesti per legem, cum adhuc rudibus populis ex diuino nutu condita isdem adstipulantibus sanciretur. et utique omnes maledicti puniti sunt, quos diuina et humana sententia consona uoce damnauit.*

The introduction in chap. 4 of this Title is also noteworthy. *Gregorianus libro quinto sub titulo de nuptiis. Exemplum litterarum Diocletiani et Maximiani imp[er]p. talem coniunctionem grauiter punire commemorat.* This passage clearly indicates that the compiler considered the ordinary Roman *Jus* too lax, and needing correction by Imperial legislation.

Significant, too, is the introduction in Title VII.: *Quod si duodecim tabularum nocturnum furem [quoquo modo, diurnum] autem si se audeat telo defendere, interfici iubent, scitote, iurisconsulti, quia Moyses prius hoc statuit, sicut lectio manifestat. Moyses dicit, etc.* The text from the Pentateuch is exceptionally preceded by a citation from the Roman Law. This departure from the regular practice is connected with the underlying idea of the previous passage. At the conclusion of Title VI., the Compiler emphasizes the stringency of the Divine Law. At the beginning of Title VII., he points out that, in regard to theft accompanied by violence, the Law of Moses was an anticipation of the Law of the Twelve Tables.

These considerations prepare the way for a discussion of the Problems of the Purpose of the Collatio, its Date, and Authorship.

PURPOSE OF THE COLLATIO.

THE purpose of the Collatio is nowhere explicitly stated, and has given rise to much diversity of opinion.

Its object was not to teach Roman Lawyers the Law of Moses; for then, more passages would have been cited from the Pentateuch. Nor had the Compiler the Christian Clergy exclusively in mind, for he addresses the Roman Advocates as well: *Scitote juris consulti*.¹

Blume's view is that the aim was to point out the similarities between the Roman and the Mosaic systems of Law, and thus to demonstrate that the former was derived from the latter.²

Dirksen goes further and suggests that the author desired that the judges of the Roman Empire should decide cases to which Roman Christians were parties in conformity with the Mosaic as well as with the Roman Laws.³ This view is groundless. To have applied in the Courts both systems of Jurisprudence would have occasioned endless confusion, and, at that time already, no Christian would have felt himself bound by the Mosaic Law in such matters as Inheritance.

Huschke holds that the aim of the Collatio was to exhibit the agreement between the enactments of the Roman and Mosaic systems, and thus check the arrogance of the heathen jurists who exalted the Roman Law at the expense of the Divine

¹ Collatio, Title vii., chap. 1, § 1.

² Blume, *Proleg.*, l. c., p. 8. *Maxima inter Cassiodorum nostrumque auctorem non solum sententiarum sed etiam dicendi generis est similitudo. nam etsi Hieronymus, Augustinus, alique iam ante Cassiodorum de similitudine ac dissimilitudine divini humanique iuris saepius egerint, pauci tamen praeter Tertullianum in ea sententia fuisse videntur ut omnia humana iura a Moysis legibus tamquam communi fonte essent deriunda, quod Cassiodorum potius Isidororumque statuissse videmus.* These views, referred to by Blume, are expressed by Tertullian, *Apologetic.*, chap. xlv.: *Dum tamen sciatis ipsas quoque leges uestras quae videntur ad innocentiam pergere, de divina lege ut antiquiore forma mutuatas.* At a later period Leo Magnus declared (Epistle 167), in reference to a matrimonial cause, *nullo prius hoc ipsum Domino constituyente, quam initium Romani iuris existeret.*

³ Dirksen, *Hinterlassene Schriften* ii., p. 125. *Irren wir nicht, so ist in unserer Rechtssammlung überall nicht die Bekämpfung des Heidentums durch das Christentum bezweckt, sondern vielmehr der Plan verfolgt worden, zu zeigen dass die christlichen Einwohner des römischen Reiches nicht ausschliesslich nach den geltenden weltlichen Rechten gleichviel ob heidnischen oder christlichen Ursprungs in juristischen Verhältnissen zu beurteilen seien, sondern dass auch dem göttlichen Recht eine selbstständige Geltung und Anwendung abseits der weltlichen Gerichtsbarkeit vindicirt werden müsse.*

Legislation, condemned the latter as antagonistic to the institutions of the Roman Empire, or disparaged it as inferior in value to the Roman Legislation.¹ The Compiler of the Collatio, accordingly, distributed his material under various titles, aptly drawn from different branches of law; placed at the head of each title a precept of the Mosaic Code, and then gave extracts from the Five Jurists, the Hermogenian and Gregorian Codes, and occasionally the new Constitutions, to show what a luxuriant crop had sprung up out of the seeds of Mosaism.²

In criticism of this view, it has been pointed out³ that already in Theodosius' day, and even at an earlier period, the need for defence against the pretensions of heathendom no longer existed. And indeed, if the purpose of the Collatio was to humble heathen jurists by exhibiting the glorious splendour of the Divine Legislation, that purpose has not been achieved. The texts from the Pentateuch are few and meagre where they might have been numerous and full; and they are swamped by extracts from the Jurists and the Codes. Again, if the Collatio was intended to be apologetic, the order of the citations from sacred and profane sources respectively should have been reversed. Examples of rules of Roman Law ought to have come first, followed by full and varied quotations from the Pentateuch, and stress might also have been appropriately laid upon the spirit of humanity and equity which informs the Mosaic legislation.⁴

Another suggestion is based on the fact that the Biblical texts cited are all from the Pentateuch. Hence the conjecture that the permission accorded by the younger Theodosius and his co-Regents to Jews to practise in Roman Courts (Theod. Cod. xvi. 8, chap. 2-5, and 24, *De Judaeis*), may have given birth to the Collatio, which was to serve budding Jewish lawyers as a guide.

This theory can be confidently dismissed as baseless.⁵ There is no reference to the work in Jewish literature, though there is abundant evidence of the influence of Roman Law on

¹ Huschke (edition Ante-Justiniani Juris, etc.), p. 646; cp. Huschke, *ibid.*, p. 669, notes and 7, on Title vi., chap. 7; p. 670, note 2 on Title vii., chap. 1, § 1.

² Huschke, *l.c.*, p. 646.

³ Dirksen, *Hinterlassene Schriften*, ii., pp. 124 and 125

⁴ See "Additional Notes" (Jewish Law), p. 159.

⁵ Dirksen, *l.c.*, p. 126, note 10. H. Zimmern, *Geschichte des Röm. Privat-Rechts* Tom. i., § 7 (not in British Museum) *apud Blume*, points out that the author might have been a Jew. This had already been suggested by Freher (*Parerg.* 1, 9,) only to be rejected by him. See note 2 at the beginning of the Essay on the Authorship of the Collatio, p. xlix.

Talmudic Jurisprudence.¹ The reason why the Compiler limits his selection of Biblical texts to the Pentateuch is because, in the whole of Sacred Writ, the Mosaic Legislation alone offered him material for comparing and contrasting the Law of God with Roman Law.

The most reasonable view is that the Collatio was prepared for the instruction of Christian clerics, and served as an introduction to the study of the Roman Law, perhaps also as an elementary guide in practice. This would account, on the one hand, for the amplitude of the references to the Roman sources, and, on the other, for the arrangement of the topics according to the second half of the Decalogue, which contains the fundamental principles of the duties to our neighbours. It would explain how the Collatio came to be regarded as one of the *Fontes Juris Romani*; its use by Hincmar in the divorce of Lothar and Tetburga; why it was found in the libraries of churches and monasteries, bound in the same codices with legal and theological matter.

The sentiments of the book are undoubtedly that the Divine Law is superior to human laws, that it answers better to the needs of humanity, and should influence legislation. These views are quite natural on the assumption that the Compiler was a Christian. If he was, at the same time, a cleric, it would account for the stress laid upon purity in sexual relations; it would explain the grief he felt at the prevailing laxity of morals, his indignation at the light penalties inflicted by Roman Law for Incest, and his desire that the Christian Rulers should correct the vices of the Empire by visiting this class of offence with heavier punishments, and thus act more in conformity with the rigorous standard of the Pentateuch.

These sentiments, however, it must be borne in mind, only find expression in isolated passages, and do not of themselves constitute the main purpose of the book, which clearly was *to teach Roman Law*.

¹ See Jost, *Geschichte der Israeliten*, iv., p. 240, and Z. Fraenkel (*der gesetzliche Beweis nach Mosaisch-talmudischem Recht*, p. 55 seq.) The last author denies direct borrowing, but admits influence of Roman on Jewish Law. *Dieses Recht ist aus verschiedenartigen Elementen zusammengefloßen . . . teils wurde Manches von den Rechten der Nationen unter denen die Juden lebten, der Griechen, Römer und der Perser entnommen.*

DATE AND PLACE OF COMPOSITION.

THE views concerning the date of the *Collatio* vary considerably. The opinion formerly held was that it belonged to the second half of the fifth century. Thus Pierre Pithou assigned it to a date later than 438, because it contains a Constitution of the Theodosian Code published in that year; but earlier than 445, or at least before the time when the collected novels were added to the Theodosian Code, since the Compiler of the *Collatio* would not have left unused Valentinian's novel, *De Homicidiis casu an uoluntate factis* of the year 445 (Haelen, *Nouellae Constit. Theodosii II., Valentiani III., etc.*, Title XIX., p. 186), if it had already been known.¹ Freher² and Jac. Gothofred³ are inclined to ascribe the work to the end of the fifth or the beginning of the sixth century. The latter⁴

¹ Pithou's 'Prefatory note. *Nunc de collectore huius libelli cuius nomen titulumque exemplar ipsum prioribus duabus paginis purum non prætulit hoc tantum dicere possumus, uideri eum Theodosii iunioris temporibus uixisse, et post consulatum quidem ipsius xv. (should be xvi.) quo demum Codex editus legitur, ex quo hic constitutionem retulit unam, non ommissurus, ut uerisimile est, de homicidio non uoluntario Valentiniani singularem legem si tum quoque edita, aut in certum Novellarum corpus redacta fuisset, Sed de re incerta nihil temere affirmare uelim.*

See note 3 to page XLIX.

² *Proleg. ad Th. Cod.*, chap. 3, p. CXG., Lugduni, 1665.

³ Examples given by Gothofred:—

COLLATIO.

Tit. i., chap. 5, 1. *Moyse legaliter dicit.*

Lib. vi., formula 8. *proximos defunctorum nobis legaliter anteponis.*

Lib. iv., cp. 37. *pronoucasse legaliter.*

Variarum 19. *legale compendium.*

Tit. v., 7, 1. *quos diuina et humana sententia consona uoce damnauit.*

9 Var. 9. *consonam uoluntatem dixit.*

Tit. vii., 1. i. *sicut lectio manifestat.*

4 Var. 39; 10 Var. 16 and 17, uses the word in reference to Biblical texts.

The Interpretation of the Theodosian Code, attributed to Arianus, uses *ad plenum* for *plene*, and *secuta cognoscitur* for *secuta est*. The opposition of *ius* and *lex* is frequently found in the Interpretation of Arianus. The following are examples of late Latinity

modo instead of *nunc*. *modo ipse loquitur*, in Title i. 3, 2.

talis, instead of *hic*:

in talem coniunctionem, in Title vi. 4.

talem constitutionem, in Title i. 9.

tale rescriptum, in Title i. 10.

de terminia mota, superscription to Title xiii.

supra relatis speciebus, in Title xiv. 3, 6.

nouellas constitutiones, in Title xiv. 3, 6. Compare Theodoric's Edict at end.

plagiatores, instead of *plagiarii*, in Title xiv. 3, 6.

relies on the similarity of the language to that of Cassiodorus and contemporary writers, and on the fact that the author of the *Collatio* was careful to give not only dates, but titles of chapters, and furthermore was able to compare the differences in date and Consulship of Constitutions as reported in the Hermogenian and Gregorian Codes. All these data lead him to believe that the writer lived before the time of Justinian, when the Theodosian Code had not yet been tampered with, and that he was probably a contemporary¹ of Cassiodorus. Blume² is of the same opinion, and supports it by the statement that, while Jerome, Augustine, and others before Cassiodorus frequently treated of the similarities and differences between the Divine and the Human Laws, Tertullian³ clearly enunciated the doctrine that human legislation has its source in the Law of Moses, a view which Cassiodorus⁴ and Isidore⁵ still more strongly laid down. Blume further argues that the use of *quia* for *quod* in the passage at the beginning of Title VII.: *Scitote iuris consulti quia Moyses prius hoc statuit*—a use probably derived from the Greek *ὅτι*—and the conjunction of *incipit* with the Accusative in the rubric at the commencement of the *Collatio*, *Incipit legem Dei*, as well as the phrases apparently of late Latinity mentioned by Gothofred, point to the close of the fifth century as the date of the work.

The Latinity prevalent at the close of the fifth century is, however, to be found much earlier among the church writers,⁶

¹ *Quare eo meus inclinatur ut credam circa decursum sexti saeculi scriptorem hunc nixisse, ante Justiniani tempora.....quo tempore Codex Theodosianus forte nondum a barbaris delibatus fuerat, et Cassiodori proinde coaevum putem.*

² Blume, *ro*! g. to *Collatio*, p. viii., *ibid*, note 12.

³ Tertullian, *Apolog.* 45: *dum tamen sciatis, ipsas quoque leges uestras (sc. ea), quae videntur ad innocentiam pergere, de diuina lege ut antiquiore forma mutatas esse.*"

⁴ Cassiodorus, lib. 4, var. 41; *ibid*, lib. 7, var. 46: *Institutio diuinarum legum humani iuris ministrat exordium, quando in illis capitibus legitur praeceptum, quae duobus tabulis probantur ascripta. sacer enim Moyses diuina institutione formatus Israelitico populo inter alia definiuit, etc., hoc prudentes iuri sequentes exemplum.*

⁵ Isidore, *Origin.* vi., 8, quotes under the *genera opusculorum*. *Praecepta sunt quae aut quid faciendum aut quid non faciendum sit docent. Quid faciendum ut diligere deum teum et honora patrem tuum et matrem tuam. Quid non faciendum ut non moechaberis, non furtum facies, similiter et gentilium praecepta uel iubent uel uetant. Primus autem praecepta apud Hebraeos Moyses scripsit.*

⁶ Rudorff, *über den Ursprung und die Bestimmung der lex dei oder Mosaicarum et Romanarum legum Collatio* 275, 276. and Huschke, *Ztschrift. f. Geschichtl., Rechtsw.* xiii. (1846), pp. 22-24.

and some instances of this late style, are found in the earlier constitutions and classical writers.¹

More recently it has been denied that the Compiler knew the Theodosian Code. So, for instance, Haenel² dates the composition after 426 (the year of the Law of Citations) possibly after 429, the latter being the date of Theodosius' project³ to compile those portions of *ius* and *lex* which were still in use, and which, according to Haenel, inspired the preparation of the Collatio. It was composed before 438, because, had the author of the Collatio known the Theodosian Code, he would have quoted the Constitution of Theodosius I. and Arcadius incorporated in Title V., chap. 3, with statement of book and title, as in the case of citations from the Gregorian and Hermogenian Codes. This, however, he has not done.

Heimbach⁴ accepts the latter argument but not the former.

¹ Title i. 5: *Moyses legaliter dicit. Legale genus questionis* occurs in Quintilian, 3, 5, 4 and *ibid.* 8, 4, *legales tractatus. Legalis vita*=Life in conformity with the Law, in Tertullian, *advers. Marcion*, 4, 25.

Title i. 2: *modo ipse loquitur Ulpianus. Modo for nunc* is used by writers of the classical period. Tibull. 1., 125, *iam modo non possum contentus vivere parvo*; See also Vergil, *Aen.*, IX, 140.

Title v. 2, *Hoc quidem iuris est, mentem tamen legis Moysis Imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. The antithesis between *jus* (= *responsa iurisprudentum*) and *constitutio* occurs already in a Constitution of the year 422 (*l.* 17, *C. de agric.*, xi. 47) in the phrase *et jure et legum auctoritate declaratur*. For *Ad plenum*—a unique phrase—there is a parallel in Macrobius, end of the 4th century, *Sonn. Scip.*, 1, 5, *non pure nec ad integrum carens corpore*. The use of *cognoscitur* (= *noscitur*, *dignoscitur*), *esse* instead of *esse apparet* or *est*, is common already in Constantine's time. *l.* 7, *Th. C.*, *de exact.* (xi. 7); *l.* 2, *Th. C.*, *ne collat. translat.* (xi. 22); *l.* 3, *Th. C.*, *de protostas.* (xi. 2); *l.* 2, *Th. C.*, *de indulg. debet.* (xi. 28). The same remark applies to the frequent use of *talis* for *hic*, formerly only found in the poets.

Title vi. 5, *quos divina et humana sententia consona uoce damnavit*; cp. *Apuleius*, *Met.* 2, *totius orbis consono ore celebrari*, and *l.* 10 (8), *Th. C.*, *de div. rescript* (1, 2), *consultorum omnium consona responsione firmatur*.

Title vii. at the beginning, *sicut lectio manifestat*. For this use of *lectio* Gothofred has collated parallels from the 4th century. See his Commentary on *l.* 3, *Th. C.*, *de respons. prud.*

Title vii. 5. The construction of *scire* with *quia* in Title vii. at the beginning, *Scitote iurisconsulti quia Moyses prius hoc dixit* is found in the Church writers of the 4th century, e.g., Rufinus Aquil. Comm. in Symbol., at the commencement: *Sententia sapientum quae probe admodum dicit quia de Deo etiam vere dicere periculosum est*. His preface to the *Sexti Sententiae* begins *Scio quia sicut grex ad vocem proprii pastoris libenter accurrit ita et religiosus auditor uernaculi doctoris admonitionibus gaudet*.

Plagiator, instead of *plagiarius*, is found in Tertullian and Jerome. 1. *Advers. Marcion*, 23: *Talis assertor (serui) etiam damnetur in saeculo, nedum plagiator*. Cp. 5, n. 3: *Magistrum autem pueri tui, de quo dignatus es scribere (quem plagiatorem eius esse non dubium est)*.

² Haenel's edition *Th. C.*, *ad leg., Jul. de Adult.* ix., 7, 6, p. 846.

³ *Th. C.*, i. 1, 5, *De Constitutionibus Principum et Edictis*.

⁴ *Jena Literarische Zeitung*, 1843, p. 719, quoted by Huschke in *Ztschr. f. Gesch. R.W.*, vol. xiii., p. 2.

He denies the existence of any resemblance between Theodosius' project and the plan of the *Collatio*. Besides, the project of compiling the Imperial Constitutions and extracts from the writings of the Jurists might have occurred to some one before Theodosius the Second. As, however, only the Five Jurists named in the law of Citations are used in the *Collatio*, Heimbach considers it proved that the work was compiled after 426, the year of the law just referred to.

The reply to this is, that the use of the Five Jurists does not prove that the *Collatio* originated after 426. For the law of Citations did not create an innovation, but only validated and regularized current practice. It did not confer on the writings of the Five Jurists a fresh authority; but merely confirmed the authority which they already possessed. The recognition, therefore, of the Five Jurists affords no ground for assigning to the *Collatio* a later date than that of the Law of Citations. The precision with which the sources of the excerpts are given, indicates if anything, an earlier rather than a later date.

Huschke thinks that the *Collatio* should be dated soon after 390, the year of the Constitution quoted in Title V., chap. 3. The novelty of that constitution would explain its inclusion in a work which only quotes from Codes and the writings of the Jurists. This date would account for the exceptional omission of the Consulship in the subscription to that Constitution, and would also explain the absence from Title VI. of Lev. xx. 21, prohibiting marriage with a brother's wife and of its parallels in Roman Law.¹

The last argument is apparently not quite convincing, for the harmony between the Mosaic Law and the Roman Constitution is not complete. The Constitutions forbid successive marriages with two sisters even after the death of the first. But marriage with a deceased wife's sister is permitted by the Biblical Law. Again, those Constitutions absolutely forbid marriage with a brother's wife. Such a marriage is in the Pentateuch only prohibited during the brother's lifetime. Should he die without issue, a surviving brother is enjoined to marry the widow. Furthermore, among the imprecations at the end of Title VI., the curse against intercourse with a brother's wife is included. But, nevertheless, Huschke is right in pointing out that the

¹ *De incest. nuptiis* (Just. Cod. v. 5, l. 5), without subscription and of uncertain but, presumably, later date than 390, and the Constitution (Theod. Code, *de incest. nuptiis* iii. 12, l. 4) dated 415, which also prohibits such marriages.

Collatio would have included those two Constitutions if it had been written at a later date.

It is quite clear that the Compiler of the Collatio did not know the Theodosian Code. This can be demonstrated from the Collatio itself. As soon as that Code appeared, it became one of the principal sources of Roman Law, and would not have been ignored by anyone who aimed at a comprehensive compilation. But the Collatio only quotes the Five Jurists and the Gregorian and Hermogenian Codes. He indeed, mentions the *Leges Novae*,¹ but only twice, and then in a fashion which indicates that he regarded them as sporadic productions, not as having been systematically collected in a Code.

In neither case is the Theodosian Code treated as an independent source of Law like the Jurists' writings or the Hermogenian and Gregorian Collections of Rescripts. The New Constitutions are quoted or referred to as giving the Compiler's views or confirming them.

The phrase *item Theodosius*, formerly accepted as evidence that the author knew the Theodosian Code, is an interpolation² by a later copyist, who only knew the compilations, sought all constitutions after Constantine in the Theodosian Code, and felt impelled to add the reference in the Collatio.

All doubt on this head is removed when we note that the single Constitution found in both works is given more fully in the Collatio (v. 3) than in the Theodosian Code from which it professes to be taken. Even if we assumed with Gothofred that someone had shortened it in the latter, still this will not account for the difference in the subscriptions. In the Theodosian Code the subscription reads *p.p. in foro Traiani VIII. Id. August Valentiniano A.IV. et Neotherio Coss.*; in the Collatio, *Prop. pridie Id. Maias Romae in atrio Minervae*. Obviously, two editions of the same Constitution, published at different times and in different places, had been used in the Collatio and the Theodosian Code respectively. Again, if we consider the care and accuracy with which the Compiler always gives the date of the Constitutions he cites (cp. Title VI., chap. 6), the exceptional omission of the Consulship in the subscription of the Valentinian Constitution is only

¹ Title v., chap. 3. Title xiv., chap. 3, § 6.

² Haenel, *l. c.*, p. 846, thinks that the original reading was *Item* or *Idem* Theodosius, which was afterwards altered by a copyist into *Item* Theodosianus.

explicable on the assumption that the Constitutions had just appeared.

So far for the *terminus ad quem*. The *terminus a quo* must remain indefinite.

The Constitution in Title V. may show that the Collatio was issued not merely just after 390, the date of that Constitution, but after 394, the year of Theodosius' victory over Eugenius. This would explain the introductory remark, *mentem legis Moysi imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. Though the Constitution was promulgated by the three Emperors named at its beginning, the Compiler might well have ascribed it to Theodosius alone, for Valentinian had died in 392, Eugenius had been beaten, and Theodosius was sole Emperor of East and West.

The fact that Theodosius is styled *Imperator* and not *Divus* does not even prove that the Collatio was compiled during that Emperor's lifetime, for, in another place too (VI. 4. 1), the Compiler mentions deceased Emperors, Diocletian and Maximian, under the title *Imperatores*, without the qualifying adjective *diui*.

The final conclusion is that the Collatio was composed certainly before 438, and after 390, possibly after 394. The last is the year of the victory of Theodosius over Eugenius; the first, that of the Theodosian Code which the Compiler did not know. The exclusive use of the Five Jurists does not prove that the work was written after 426, when the Law of Citations was promulgated; for that law merely legalised existing practice.

The place of origin is uncertain. Huschke assumes that the Collatio was composed in the East. He bases his view on the hypothesis that the Gregorian Code originated in the West, and that the Collatio exhibits a preference for the Hermogenian, which, according to Huschke, was the companion code for the East. He further contends that the Introduction to the Constitution in Title V., chap. 3, shows that the Compiler recognised Theodosius, Emperor of the Eastern half of the Empire, as his Emperor.

Both hypotheses are unproved; the data are capable of other interpretations.¹ That the Pentateuch is quoted in Latin rather than in Greek and that the extant Manuscripts hail from Italy are strong evidence in favour of the view that the Collatio was composed in that country.

¹ On the use of the Hermogenian and the Gregorian Code see Essay on the Plan of the Collatio, p. xxxvii.

AUTHORSHIP OF THE COLLATIO.

THE Author of the Collatio, it is agreed by nearly all critics, was a Christian.¹ Freher² indeed suggests that the Compiler might have been a Jew, who wished to dissipate the prejudice against his people and faith by showing that the Mosaic and Roman Laws were not so far apart, and that in fact the latter was derived from the former. He, however, dismisses the suggestion, and assumes that the Compiler was a Christian monk.³ This is not probable, as before St. Benedict, there were few monks in the West, and their culture was not high.⁴ That he was, however, in Holy Orders may be inferred from his knowledge of Scripture and the use of the phrase *Scitote jurisconsulti*,⁵ a form of address not usually employed by a secular lawyer towards colleagues, but suitable in the mouth of an ecclesiastic addressing laymen.⁶

Among the French Scholars of the sixteenth century the

¹ Blume, *Proleg.* to his edition of the Collatio, v., note 1. Pithou in his note on Title xv., chap. 3, s. v. *de terroribus*, assumes that the author was a Christian, and notes his fidelity in reproducing a Constitution against the Manichaeans (Tit. xiv., chap. 3, § 2), which contrasts the older Roman Creed with new and strange views, and is thus a reflection, not only on the Manichaeans, but also on the Christians.

Ménage, *Juris Civilis Amoenitates*, p. 16 (1664 edition), says: *Christianum fuisse ait Cujacius, Observatt. lib. viii., cap. 2., sed nullo addito argumento. Idem ait et Bertrandus in ejus uita: probatque quod Collationem Legum Mosaicarum et Romanarum scripsit.*

² Freher (*Parerg.* i. 9): *Possit aliquis existimare Judaeum fuisse, qui cum laborare sectam suam uideret invidia, quod disciplinâ iureque a Romanis diverso uti nosceretur, ut Cornelius Tacitus alicubi ait, Mosaicæ leges, quibus Judæi utantur, cæterorum imperiorum legibus plane esse contrarias, ita ut profana sint Israelitis, quæ ceteris gentibus sacra, ut Juvenal Satyra xiv.:*

"Romanas autem soliti contemnere leges.

Judaicum ediscunt et seruant ac metuant ius

Tradidit arcano quodcunque uolumine Moyses"

amoli eam inuidiam studens demonstraverit non usque adeo multum legibus Judaicis et Romanis disconuenire atque adeo ex patriis suis legibus sibi que ueluti per manus a parentibus traditis fluxisse Romanas.

³ Freher *Parerg.*, i. 9: *Ego quidem plane existimo, monachi alicuius ante Iustiniani tempora eum laborem esse; qui in Bibliothecis uiderim, a Graecis et iam hominibus similes illi compilationes legumque diuinarum cum Caesario collationes.*

⁴ Blume *Proleg.* l. c., p. ix.

⁵ Collat., Tit. vii. 1, 1.

⁶ Too much stress should not be laid upon this argument. *Scitote jurisconsulti* may be equivalent to *Sciendum est* (Tit. xiv., chap. 3, § 6). The phrase may be an imitation of the form of apostrophising their communities used by the Apostles, and which found its way into current use owing to the translation of the New Testament (H. E. Dirksen's *Hinterlassene Schriften*, ii., p. 127).¹

Collatio was attributed to Licinius Rufinus. Pithou, in the Prefatory note to his Edition, reports this as the view of Jean Dutillet, Bishop of St. Briec, and afterwards of Meaux. Pithou adds that he does not know whether Dutillet's view was conjectural or based on the authority of a Manuscript.¹ In any case, the Compiler of the Collatio, who quotes a Law of Theodosius the Great (v. 3), could not be the Licinius Rufinus who was a contemporary of Paulus.²

Charondas³ accepts the name Licinius Rufinus. So does Cujas, and assumes that it belonged to a Christian author.⁴

In a letter to Pierre Pithou, dated October 17th, 1570 (M.S. Dupuy, Paris, 700), he asks for a loan of Licinius.⁵ In his acknowledgment of the receipt of the manuscript, he says that he had instituted inquiries in three separate places for a second copy; and in a letter dated January 20th, 1571, he writes that he would very much like to see the original manuscript of the excellent Rufinus.⁶ The name Licinius Rufinus appears again in his writings, once in a letter dated February 15th, 1573; three times in the Observations, 1573, 1585, 1595. He also, however, calls the work *Lex Dei* and *Collatio Legis Judaicae*. Thus, in a letter dated April 11th, 1573, he expresses his regret that he has not yet seen a printed copy of the *Lex Dei*; and in 1579 he uses the title, *Collatio Legis Judaicae*. When, however, in 1586, he published the Collatio together with the Theodosian Code, he studiously avoided the name Licinius Rufinus.

And yet after his death, his authority was appealed to by John Bertrand⁶ for Licinius Rufinus as the author. Marquard Freher published in 1594 at Frankfurt the Lectures on Paulus' *Quaestiones*, which Cujas delivered in 1588, and reports him as having said that a Manuscript of the Collatio in a certain

¹ *Ac memini Jo. Tilium...narrare solitum, habuisse aliquando se eius operis fragmenta pauca quibus ille Licinii Rufini nomen tribuebat, an ex coniectura, an potius ex ueteris libri fide non satis scio.* (Pithou's first note.)

² *Ibid.* Non esse Licinii Rufini cuius nomine ad Julium Paulum in libris nostris consultatio inscripta est. [According to the Florentine Index, Licinius Rufinus was the author of Rules, in 12 books. This is clearly a mistake, as an extract from the 13th book is given in the Digest xlii. 1, l. 34. His date is fixed by an extract from Paulus' *Quaestiones*, book xii., in which his question to Paulus and the latter's answer are given.]

³ Preface dated Paris, 1572, to his edition of the Digest, published at Antwerp, 1575, *Fuere etiam Christiani, Licinnius Rufus et Aurelius Arcadius Charisius.* Obss. vii. 2, of the year 1564.

⁴ See, for original quotations, p. xvi, note 2, in Essay I.

⁵ See note 1, to p. 1 of this Essay, and also Blume, *Proleg.*, l. c., p. 5, note 1, who quotes Bertrand's statement that the author was Licinius Rufinus, and, accordingly, a Christian.

library in Germany bore on the title-page the name Licinius Rufinus.¹ The only known German Manuscript, the Salzburg-Vienna Codex, does not contain the words Licinius Rufinus. Hence Blume dismisses the report as an idle tale, taking his stand on the fact that had Cujas known of the existence of such a manuscript, we should have had an exact description of it. Moreover, Cujas himself indicates that he was uncertain as to the name of the author.²

Still, it ought not to be forgotten that the ascription to Licinius Rufinus rests not on the authority of Freher's Report of Cujas' Lectures but on that of Dutillet, Cujas, Casaubon,³ and other scholars. The name appeared on the title page of the Geneva edition of 1586, and the Lyons edition of 1593.⁴

Notwithstanding these authorities, Gille Ménage and Anton Schulting, in the seventeenth and eighteenth centuries, have rejected the authorship of Licinius Rufinus, and have contented themselves with the negative result that nothing can be ascertained as to who was the author of the Collatio.

In our own days the name has been revived. Huschke attributes the Collatio to the Father of the Church, Rufinus of Aquileia. Huschke assumes, as already noted, that the Collatio was composed in the Eastern half of the Empire, and that its purpose was to point out to the Roman Jurists, who regarded other systems with contempt and hostility, that there was no antagonism between the Roman Jurisprudence and the Mosaic Legislation, and that the latter had indeed anticipated the former in several points.

The author must accordingly have been a Churchman, equally conversant with the Pentateuch and the writings of the Jurists. He must have composed the work after 390, as he incorporates in it a Constitution of that year. There must have been hostility between him and Jerome to account for his not taking his Scriptural quotations from the Vulgate. He must have been

¹ *Is uero L. Rufinus qui contulit leges dei cum legibus populi Romani fuit enim Christianus et illa Collatio, quae non ita dudum edita est a Petro Pithoeo, habet in quadam bibliotheca Germaniae praefixum nomen Licinii Rufini.* Quoted by Blume, *Proleg.* vi., note 2.

² By his calling the work *Lex Dei*, etc., and by avoidance of the name of the author in his edition of the Collatio. If he refers to the work as Rufinus, it is for the sake of brevity.

³ In his notes to Spartian (see Blume, vii., note 6).

⁴ The title is given as follows: *Licinii Rufini Collatio legum judaicarum et Romanarum* (Blume, l. c., p. xii.).

tolerant, for he cites a constitution of Diocletian against the Manichaeans, containing strictures against other sects also, and yet adds no word of censure on the persecuting Emperor.

The life and activities of Rufinus answer to these criteria. Born at Concordia, near Aquileia, he went to Alexandria in 371, stayed there six years, and was then a presbyter in Jerusalem, 377—397. He had a dispute with Jerome, which was composed. He afterwards returned first to Rome and then to Aquileia, where he prepared translations from the Greek, among them that of Origen's *περ' ἀρχῶν*, which aroused Jerome's hostility afresh. He died in 410, the year of the Gothic King Alaric's flight. These data, in Huschke's opinion, justify his identification with the author of the Collatio.

Contact during his stay at Jerusalem with the jurists of the neighbouring Roman Law School of Berytus, and knowledge of their sentiments with regard to foreign systems of Jurisprudence may have impelled Rufinus to write a comparison of Roman and Mosaic Law to show the Roman lawyers that Moses had laid the foundations on which, later on, the Romans built their wise laws.¹ His training and tastes fitted him for such a task. He was not an original writer. His works are mostly translations, and these include the Ethics of a heathen—the *Sententiae Sexti Pythagorici*. His Latin version of Origen kept him occupied with the Pentateuch, from which he cites texts not according to Jerome's Vulgate. And only a Church Father who was sufficiently liberal-minded to translate the "Sentences of Pythagoras" would have faithfully quoted Diocletian's "Constitution concerning the Manichaeans" (Title XIV., chap. 3, § 2) without adding a condemnation of that Emperor's exhortations to adhere to the old faith.

Huschke himself anticipates three objections to his theory. First, there were at the time many distinguished Churchmen called Rufinus.² To this the reply is that only the Church Father was known as an author. Secondly, the Collatio is not mentioned in the list of the works of the Church Father. The list, however, is incomplete.³ The Collatio, being only a compilation, might have escaped notice, especially as it came

¹ Introduction to the Collatio in Huschke's Edition of Ante-Justinian Jurisprudence, p. 646.

² Fontanini, *Histor. litter. Aquilensis, Libri v., Rom.* 1742. Books iv. and v. deal exclusively with Rufinus; on p. 412, six men of this name are mentioned who were distinguished in the Church.

³ Fontanini, *l. c.*, pp. 341 and 412.

to be of interest to the jurist rather than to the theologian. Thirdly, all his writings have prefaces, while the *Collatio* has none. But this is only the case with Rufinus' larger books. Moreover, in course of time, an apology against heathendom would no longer have been necessary. The preface which may have indicated such a purpose would have lost its point. Hence the preface has not been preserved.

Huschke's theory rests on the assumption that Jean Dutillet did not fix upon the name Rufinus arbitrarily, but found it in some manuscript,¹ and added Licinius, the name of a famous jurist, in order to indicate by the combination the dual character of the work. False ascriptions were, indeed, not uncommon in the Middle Ages. But this hypothesis destroys the force of the entire argument drawn from the fact that the name Rufinus¹ is attributed to the work, for this name, too, may be fictitious. The dissimilarity of the language of the Biblical texts in the *Collatio* and the Vulgate does not help Huschke's view as to the authorship. For the quotations from the Pentateuch in Rufinus' acknowledged writings show no correspondence with the texts in the *Collatio*. Cp. Deuteronomy xviii. 10, 11 in the *Collatio* and the same text in Rufinus.² The strongest argument against Huschke's view is that the traditions of the manuscript belong to the West and not to the East. And it is incomprehensible that a work of Rufinus, whose views brought him into conflict with Jerome, should have been accepted as authoritative,³ and that at the same time its authorship should have been forgotten.

Rudorff suggests that the author of the *Collatio* was St. Ambrose, Bishop of Milan. The following are his grounds. At the end of the thirteenth, or beginning of the fourteenth,

¹ The phrase attributed to Cujas by Freher : *Habet in quadam Bibliotheca Germaniae prefixum nomen*, might thus be true.

² *Collat. xv. 1, § 1, 2. Non inueniatur in te . . . diuinus apud quem sortes tollas, nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. Nec intendas prodigia, nec interroges mortuos. Non inueniatur in te augurator nec inspector animum nec maleficus aut incantator nec Pitonem (= Pythonem) habens in uentrem nec aruspex, nec interrogator (mortuorum nec portenta inspiciens.)* Rufinus, Homil. Origen xvi. on Numbers, § 7. *Non inueniatur in te . . . diuinans diuinatione neque sortiens sortibus, neque maleficus neque incantator neque uentriloquus neque portentorum inspector neque interrogans mortuos.*

³ As is shown by Hincmar's quotations from it. See Essay I., at the beginning, and quotations from the *Collatio* in Appendix to an Epitome of Alaric's Breviary, Cod. St. Gall. No. 722, printed in Haenel's *Lex Visigothorum*, p. 455. Cp. Rudorff, *l.c.*, p. 293 and notes.

century, the Nestorian Metropolitan of Nisibis and Armenia, Ebediesus of Soba, put together a collection of Synodal Resolutions.¹ The work consists of nine parts. In the introduction to the third part, which deals with Intestate Succession, the writer gives a historical survey of the subject. After a reference to the Œcumenical Councils at Nicæa in 325, and at Constantinople in 381, there occurs a passage rendered by Assemani as follows: *Sequiori adhuc ævo alias adiecit leges Ambrosius Mediolanensis episcopus, ab imperatore Valentiniano iussus scribere statuta et ordines iudiciorum praeffectis locorum. Ex Christianis praeterea principibus leges et iura scripsere Constantinus ille magnus, Theodosius et Leo idque, sicut nobis traditum est in occidente praestitere.* A closer translation by Roediger is given below.²

Rudorff's contention is that the Collection of Statutes and Ordinances which Ambrose was asked to write is the Collatio. The date of the Collatio, now accepted, is consistent with his theory. For the work would then have been published after the Œcumenical Council of Constantinople and before the Laws of Constantine and Leo, which belong to the last quarter of the fifth century. These Laws, moreover, begin with the topic of Intestate Succession with which the Collatio ends, and they

¹ Translated from the Syriac into Latin by Alois Assemani, according to two Vatican Manuscripts. *Ebediesu Decisio iurum ecclesiasticorum in Assemani's bibliotheca orientalis* III., i., p. 267. Angelo Mai, in the 10th volume of his *Scriptores*, repeated the task, using a third manuscript which Assemani had given up as lost. *Ebediesu Metropolitae Sobae et Armeniae collectio canonum synodicorum ex Chaldaeis bibliothecae Vaticanae codicibus sumpta et in Latinam linguam translata ab Aloysio Assemano. Praecedit epitome canonum apostolicorum auctore eodem Ebediesu in the Scriptorum veterum noua collectio.* Tom. x. Romae, 1838.

² Roediger's translation is attested by Noeldeke as accurate (Mommson, *l. c.*, pp. 129 and 130, note 2). *Composuit deinde (leges) post hos Ambrosius, episcopus Mediolanensium, quum a Valentino [read Valentiniano] rege iussus esset ut scriberet et in ordinem redigeret iura* [Syriac, *dinê*, usually meaning *iudicia* or *statuta*] *et ordines* [Syriac *tekse* = *τάξεις*] *praeffectis* [Syriac, *higēmuni* = *ἡγεμόσι*] *regionum* [Syriac, *athrawāthā*]. *Et ex regibus Christianis etiam scripserunt iura* [Syriac, *Dinê*] *et decreta* [Syriac, *pesakê*, *decisiones*] *Constantinus ille magnus et Theodosius et Leo. Et haec quidem ut comperimus in terra occidentis.* Assemani remarks in reference to this account (*Biblia Orientalia*, iii. p. 269): *Undenam id hauserit Sobensis incertum. Leges quae Valentiniani nomen praeferunt non alia videntur ratione Ambrosio tributae quam quod ei aequales fuerunt et aliqua negotia iussu Valentiniani Ambrosium suscepisse ex historia ecclesiastica compertum est.* Rudorff contends that Ebediesu was too thorough a scholar to be thrust aside lightly. His writings received canonical authority in the Nestorian Church; and though the Nestorians, since the close of the 5th century, separated themselves from the Byzantine Church, and repudiated the later legislation of the Eastern half of the Roman Empire, still, on this very account, they would be better instructed in the older sources, which they accepted as binding. Ebediesu's report ought, therefore, not to be rejected because its source is remote.

contain a mixture of Roman and Mosaic Law like the Collatio, which they seem to have used.¹

If the Collatio is the work referred to by Ebediesu, Ambrosius could well have been its author, for he was Master of the Mosaic Law, the *ius civile* and the Constitutions, the three elements composing the Collatio.²

Indeed, the Roman sources, to which the Collatio limits itself, correspond to Ambrosius' education and career. Gaius' Institutes, the *pars de iudiciis* from Ulpian's Commentary on the Edict and Papinian's Responses, belong to the three years' course in the Roman Law Faculty. The two collections of Rescripts and the few *Extravagantes* of the later Constitutional Jurisprudence, the Citations from Paul's *Sententiae* and Ulpian's *de Officio Proconsulis*, fit in with Ambrose's special studies and his practical juristic and administrative career. The language in the six passages of the Collatio, where the compiler himself speaks, is free from rhetorical flourishes, as one would expect from Ambrose. The peculiar use of *Quia*, instead of *Quod*, is found in the writings of the Bishop.³

That Theodosius is named without fulsome titles, confirms the hypothesis that the Collatio proceeded from Ambrose, who addressed the Emperor simply as *Tua Clementia*, without adding the titles of exaggerated homage current in that age.⁴ The Biblical quotations in the Collatio and those used by Ambrose are taken from the same source.⁵ Finally the place of origin of the Manuscripts should be borne in mind. All the three Codices are of North-Italian origin. One of them is still at Vercelli, and this place is within the see of Milan.

But even the theory attributing the Collatio to Ambrose, notwithstanding its attractiveness, presents many difficulties.

The Collatio mentions Theodosius as sole Emperor (v. 3, 1). It must, therefore, have been composed not earlier than 394.

¹ The First Article: Where there are no sons, daughters succeed, as in Num. xxvii. 1-8, and Collatio xvi. 1. Agnates are preferred to cognates. Women in the third degree are to be excluded. Here the Roman element in the Collatio is incorporated. The penalties for theft, house-breaking and cattle-raiding (Arts. 77, 81, 82), and for culpa in deposit (Art. 127) are identical with the terms of the Collatio (vii. 1, 1-2; vii. 4, 1; x. 3, 1; xi. 7).

² This is proved by the letter to Paternus in 395, in which the prohibition of marriage with a sister's daughter is explained according to the three systems of law.

³ Ambros. Ep. 21, note 7, *Omitto quia iam ipse populus iudicavit: omitto quia cum quem habet, de patre Clementiae tuae postulavit. Taceo quia pater pietatis tuae quietem futuram spondit si electus susciperet sacerdotium.*

⁴ See previous note.

⁵ Cp. Mommsen, *l. c.*, p. 130, note 3, and references in Appendix to Rudorff, *l. c.*

It is improbable that a work composed twenty years after Valentinian's death in 375 should have been written at the instance of that Emperor. Rudorff's view that the Collatio is to be connected with the co-operation between Church and State, and was intended to reassure Christian judges¹ who had qualms of conscience about the lawfulness of administering Roman Law, has no basis in Ebediesu's Report. *Pesaké* and *Diné, statuta et ordines*, to be sent to the Governors of the Provinces, do not correspond with the contents of the Collatio, a work of less technical character, and probably intended to serve as an introduction to the study of Roman Law.

The Collatio is too elementary to have proceeded from the pen of St. Ambrose, equally eminent as a bishop and a statesman. The compiler was probably an obscure clerical official practising in the Bishop's Court,² who was possibly also a teacher of Roman Law. His name, hitherto undiscovered, will, in all likelihood, always remain unknown.

¹ Cp. Ambros, *Ep. ad Studicum*, lib. vii., Ep. 58, where the bishop explains to Studicus, a state official, that he is justified in pronouncing a sentence of death, but it is praiseworthy to withdraw from the Church.

² See Muirhead, *Roman Law*, p. 357, "The Bishop's Court had its origin in the practice of the primitive Christians, in accordance with the Apostolic precept, of submitting their differences to one or two of their brethren in the faith, usually a presbyter or bishop, who acted as arbiter. On the establishment of Christianity the practice obtained legislative sanction." See Muirhead, *ibid.* On the Functions and Jurisdiction of this Court. Of course the Collatio, much of which deals with crimes against private individuals, was not intended for practical use in the Bishop's Court, which had no criminal jurisdiction.

FACSIMILE OF
THE BERLIN MANUSCRIPT
AND TRANSCRIPT.

INCIP LEX DIQUA

kp d xxi. Moyses disacerdotis hanc dicit

Siquis percusserit hominem ferro & occiderit eum
moratim moratur. Si autem manu lapidem
quo non possit percusserit & mortuus fuerit ho-
micida est moratim moratur. Si autem p[ri]mici-
tia impulerit eum uel inmisericordiam super eum aliquo-
dum & infidus & mortuus fuerit uel p[er] hanc per-
cusserit eum manu & mortuus fuerit moratim
moratur... kp d xxi

Paulus quoque libro quinto sententiarum sub anno
Loced legem corneliae deficiens ad benepiens dicit
lex corneliae poenam de pora & coquis infligi eique
hominem occiderit eiusque rei causam paratue
peccididi cum alos fuerit. & qui uenerit in hominis
necandicausa habuerit uel diderit parauerit
falsum uel testimonium dixerit quocumque perisset
moratim causam prestatum quod omni fecerit
pro in honestiores poena accipit unde accipiam
hunc praefecto aut inuicem tollitur. aut
hostis subiciuntur kp d xxi. ut p[ri]mus libro

Occidit proconsulis sub anno deficiat ut
quod uenerit capite primum legis corneliae
deficiens occiditur ut hunc praefectum iudex ut
questionis causam obuenit quod a te

INCIP LEX DĪ QUAM DŖ PRECEPIT AD
[MOYSEN].

Kp̄ DXCII. Moyses dī sacerdos hac dicit.

Si quis pcusserit hominem ferro & occiderit eum
mortem moriatur. sin autem manu lapidem 5
quo mori possit pcusserit & mortuus fuerit ho
micida est mortem moriatur. Si autē p inimici
tiā inpulerit eum uel inmiserit sup eum aliquo
duas ex insidiis & mortuus fuerit uel p iram per
cusserit eum manum & mortuus fuerit mortem 10
moriatur Kp̄ DXCIII.

Paulus quoque libro quinto sententiarum sub titu
lo ad legem corneliā de sicariis et beneficis dicit.
lex cornelia poenam deportationis infligit ei qui 15
hominem occiderit eiusque rei causam furtive
faciendi cum telo fuerit, & qui uenenum hominis
necandi causa habuerit uendiderit parauerit
falsum ue testimonium dixerit quo quis perisset
mortis suę causam prestiterit que omnia facino 20
ra in honestiores poena capitis uindicari placuit
humiliores uero aut in crucem tolluntur aut
bestiis subiciuntur, k̄p̄ dxciiii: ULPIANUS LIBRO VII.

De officio proconsulis sub titulo de sicariis
& ueneficis capite primum legis cornelię
de sicariis cauetur ut his pretor iudex uę 25
questionis cui sortem obuenerit questio

Square brackets indicate words obliterated and supplied from the Editions.

| Line. | Line. |
|---|-------------------------------------|
| 1. Abbreviation of Dei is indicated by a horizontal line above word. Similarly for Deus or Dominus. | 10. manum, read manu (V.). |
| 3. Hac, read haec (W.).* | 13. beneficis = ueneficis. |
| 5. sin:— si (V. W.). | 15. causam, read causa. |
| 7. mortem moriatur. V. has morte throughout. | 18. perisset, read periret (V. W.). |
| | 24. primum, read primo. |
| | 25. his = is. |

* W refers to the Readings in the Vienna Codex.

V " " " " Vercelli Codex.

M " " " " Mommisen's Text

De homicidio *§ De homicidio per vim* *¶ De homicidio per vim*
Hic facit. iniquetur cum mulieribus eam
delegem serafinobuenerint deceptum qui
celo ambulare hominis necandi furatue fa-
ciendi causa homine us occiderit cuius idolum
melofecatum fuerit & reliqua. lxxv.
Relictis uerbis legimodo ipso loquitur. Ulpianus
heclx non omnem quicumque celo ambulauerit
punit sed eum tantum qui hominis necandi fur-
tue faciendi causa telum gerit coercet conpesci.
Idem qui hominem occidit coercet nec elect
cuius conditionis hominem uas adseruum &
peregrinum patitur ite heclx uidetur
lxxvi. Item paulus libro quod supra &
titulo dicit homicide est qualique genere arch
hominem occidit mortuus causam prestat.
lxxvii. Item de causalibus homicidis mor-
fer legatus dicit si autem non inimici eius inmi-
serit superum aliquo duces non insidiari uel
lepidum quomortatur non p dolum. & cecident
superum mortuus fuerit. Si autem inimicus eius
neque quesierit malefacere ei iudicebitur liti-
eum qui percussit & proximum mortui secundum
iudicium hoc & liberabitur percussorem. lxxviii
Ulpianus libro & titulo qui supree relectio diffinitione

[de sicariis eius] quod in urbe roma propriis mille pas
sus factus sit. utique erat cum iudicibus cui ei.
ex legem sortem obuenerint de capite eius qui cū
telo ambulauerit hominis necandi furtiue fa
ciendi causa hominē uē occiderit cuius id dolum
malo factum fuerit & reliqua. Kp̄ dxcv. 5

Relatis uerbis legi modo ipsi loquitur. Ulpianus
hec lex non omnem qui cum telo ambulauerit
punit. sed eum tantum qui hominis necandi fur
tiue faciendi causā telum gerit coerci conpesci, 10
item eum qui hominē occidit coercit nec aiecit
cuius conditionis hominem ut & ad seruū &
peregrinū ptinet ire hec lex uideatur.
Kp̄ dxcvi : Item paulus libro quod supra &
titulo dicit homicida est qui aliquo genere teli 15
hominem occidit mortis sue causam prestitit.
Kp̄ dxcvii. Item de causalibus homicidis moy
ses legaliter dicit. si autem non p inimicicias inmi
serit sup eum aliquod uas non insidiant uel
lapidem quo moriatur non p dolum. & ceciderit 20
sup eum mortuus fuerit. Si autem inimicus eius
neque quesierit malefacere ei iudicabitis inter
eum qui pcussit & proximum mortui secundū
iudicia hec & liberabitis percussorem. Kp̄ dxcviii
Ulpianus libro & titulo qui supra relato distinctionē 25

Line.

1. propriis, *read* propiusue (*Schulting*)
2. factus, *read* factum. utique erat, *read*
uti quaerat ; for cui *read* qui.
3. legem, *read* lege; sortem, *read* sorte.
5. dolum, *read* dolo.
7. lege, *read* legis. ipsi, *read* ipse.
8. hec = haec.
10. causā, *read* causa; coerci, *read* coercet ;
conpesci, *read* conpescit.

Line.

11. aiecit, *read* adiecit.
13. pertinet ire, *read* pertinere.
14. quod, *read* qui.
16. mortis sue, *read* mortisue.
17. causalibus, *read* casualibus.
19. insidiant, *read* insidianter or insidians.
21. Si autem inimicus eius, *read* Si autem
non inimicus eius fuerit.
25. relato, *read* relati.

casus & uolun[tatis In homicidio seruari rescripto Hadriani]
 confirmatur; Kp̄ dxcviii: [Uerba rescripti et qui ho]
 minem occidit absolui solet sed si non oc[ci]de[n]di animo id
 admisit et qui non occidit sed uoluit occidere pro homi
 cida damnatur et re itaque constituendum est ex quo 5
 ferro percussit ipsa funditus nam si gladium instrinxit
 aut telo percussit quid dubium est qui non occi
 dendi animo percusserit sic, lapidem pcussit
 aut cucuma aut cum forte rixaretur ferro
 pcussit. sed non occidendi mente ergo hoc exquiri 10
 te, et si uoluntas occidendi fuit ut homicidam
 seruum supplitio cum iure iubete affici.

Kp̄ dc. paulus LIBRO TERTIO QUINTO TITULO quod sup̄

Qui hominem occidit aliquando absolui
 tur. et qui non occidit ut homicidā damnatur 15
 consilium enim unius cuiusque non factum pu
 niendum est. ideoque cum uelle occidere casu ali
 quo ppetrare non potuit. ut homicida puniatur
 et his qui casu teli hominem imprudenter ferierit
 absoluitur. quod si In rixa pcussus homo fuerit 20
 qm̄ iocus quoque ipso contra unumquemque
 contemplari oportet, ideo humiliores in ludū
 aut in metallum damnentur honestiores de
 media parte bonorum multati relegantur

Kp̄ dci. Item Gregorianus libro iiii. ad lege 25

Line.

5. et re, *read* e re (*Edd.*). ex quo, *read* ecquo (*M.*).
6. ipsa funditus, *read* Epafroditus (*Blume*).
7. qui non, *read* quin.
8. sic lapidem, *read* si clauē (*Digest*).
12. supplitio *read* supplicio.
12. cum iure, *read* summo (*M.*).
13. libro tertio quinto titulo quod, *M. reads* libro et titulo qui.
15. homicidā, *read* homicida.
17. cum uelle, *read* si cum uellet (*V., W.*).

Line.

18. puniatur, *read* punitur.
19. his = is. *After* casu *supply* iactu (*Paulus*).
20. fuerit, *read* perierit (*Paulus*).
21. qm̄ = quoniam. iocus, *read* iotus (*Digest*). ipso, *read* ipsos.
23. damnentur, *read* damnantur.
- 23 and 24. de media parte, *read* dimidia parte (*V.*).
25. lege, *read* legem.

[c]ornelia corneliam de sicariis] et beneficiis talem
[constitutionem ponit] imperator antoninus ā
[aurelio herculano et] aliis militibus frater uester
rectius fecerit si ne presidi p̄intię optulerit
cui si pbauerit non occidendi animo iustā a re 5
pcussam esse remissā homicidii poena secundum dis
ciplinā militarem sententiam pferret ppositio.
p̄rid k̄L FEBRU LETIO UIS C̄ONSS.
K̄p̄ dcii ITEM GREGORIANUS EODEM TITULO,
et libro talem constitutionē ponit imp̄ alexan 10
der aurelio fauio et aliis militibus si modo p̄ quod
libellum dedistis non dolo prestitit mortem minime
porrescat crimen quippe ita contrahitur et si
uoluntas occidendi intercedat ceterum eaq; _____
plerumque non noxę inputantur. PROP XIII k̄L AUGUS 15
ALEXANDRO, C̄ONS; K̄p̄ DCIII; ITEM GRE
GORIANUS EODEM LIBRO ET TITULO.
tale rescriptum dedit quod si dnm̄ habe agatu
K̄N̄. qualitas p̄ęcū iuli antonini clementiam
nram̄ facile commouit quippe quod adseueret 20
humicidium se non uoluntate sed casu fortuito fe
cisset cum calicis ictum mortis occasio preuitat
uideatur. quod si ita est neque sup̄ hoc ambigi
poterit omnium metu hac suspitione. quod ex
admissee rei discrimine sustinet secundum idquod 25

Line.

1. *Omit first cornelia as superfluous.*
beneficiis = ueneficis.
3. herculano, *reported by Mommsen as*
Herculario *in the MSS.*
4. si ne, *read* si se (*Just.*).
7. proferret, *read* proferet (*Just.*). pro-
positio, *read* proposita.
8. Letio = laeto. uis = bis.
11. *After Alexander supply* A. (Augustus).
fauius = Flauio. quod *read* quo.

Line.

13. porrescat = perhorrescat, et si, *read* si et.
15. *Supply before* plerumque: ex im-
prouiso casu potius quam fraude acci-
dunt fato (V., W.).
18. habe = auc. agatu = agatho.
19. K̄N̄ = Karissime Nobis.
20. nram̄ = nostram.
22. calicis *read* calicis. ictum, *read* ictu.
preuitat *read* praebita,
24. omnium metu, *read* omni eum metu.
25. admissee = admissae.

adnotatione nos[tra] compre[hensum uolumus]
 liberari: dāt prīd kl [Decemb. Diocletiano Aug iiii et]
 maximiano CONSS. Kp̄ dciiii [ULPIAN] US LIB[RO]
 ET TITULO QUOD SUPRA: cum quidam lasciuam
 causam mortis prebuisset conpbatum est factū 5
 taurini egnati prōc: uetice a diuo hadriano
 quod eum in quinquennium relegasset. Kp̄ dcv.
 UERBA CONSOLATIONIS ET RESCRIPTI ITA SE HA
 BENTEM INTER CLODIUM OPTIME IMP:
 et euaristum cognouit quod gladius luppi filius in 10
 conuiuio dum sago iactatur culpam manu euaristi
 ita mele acceptus fuerit ut post diem quintum more
 retur adque adparebat nulla inimicitia cum ebaristi
 fuisset. nec cupiditatis culpā quoercendum crededit
 ut ceteri eiusdem etatis iuuenes emendarentur 15
 Ideoque mario euaristo urbe italia prouintia ueticep
 in quinquennium interdixit decreuit, et impendi causa
 duo milia patri eius psolueret ebaristus quod manifes
 ta eius fuerat pauptas uel res. Kp̄ dcvi UERBA
 RESCRIPTI, poenam Mari ebaristi recte et tauri 20
 ne moderatus est admodum culpe refert enim
 et in maioribus delictis consulto aliquid admittatur
 hanc casu, et sane in omnibus criminibus distinctio hec
 poenam aut iustitiam prouocare debet. aut tempe
 ramentum admittere. Kp̄ dcvii. 25

Line.

4. quod, *read* qui. *Before* lasciuam *insert* per.
6. uetice = Baeticae.
8. consolationis, *read* consultationis.
- 8 and 9. habentem, *read* habent.
9. Clodium = Claudium. optime = optime.
10. For cognouit *read* cognoui; for gladius, Claudius; for luppi, Lupi.
11. culpam, *read* culpa. manu, *read* Mari.
12. mele, *read* male.
13. adque = atque.
- 13 and 14. nulla inimicitia cum ebaristi fuisset, *read* nullam inimicitiam cum euaristo ei fuisse.
14. nec... crededit, *M. reads* tamen cupiditatis culpa coercedum credidi (*perhaps it should read* nec minus cupiditatis . . culpam coercedam credidi . .).

Line.

17. interdixit, *read* interdixi; decreuit, *read* et decreui; et (*before* impendi), *read* ut.
18. ebaristus = Euaristus.
19. uel res. *Huschke, following Pithou, reads* uelis rescribere, *M., however, thinks that in the Archetype V R stood as abbreviation for* Uerba Rescripti, *that the full form was afterwards inserted and that the copyist read the retained V. R. as uel res, which makes no sense.*
20. et, *omit.*
21. est, *read* es; admodum *to be read as two words.*
23. hanc, *read* an.
24. iustitiam, *read* iustam (*Digest*).

[modestinus libro diff]erentiarum sexto
 [sub titulo de scientibus et i]gnorantibus generalit̄
 [loquitur nonnunquam] pignorantiam delinquentib,
 iuris ciuili uenia tribui solet si modo rem pacto quis
 non iuris ignoret qui scilicet consilio delinquentibus pres 5
 tari non solet ppter quod necessarium est addita distinc
 tionem considerare utrum sciente ad ignorante ali
 quo quid gestum pponatur et reliqua. Kp̄ dcvm.

PAULUS LIBRO ET TITULO QUOD SUPRA:
 qui telum tutandę salutis causa ageret non uideatur 10
 hominis occidendi causa portare. teli autem appella
 tionem non tantum ferrum continetur. sed omnem
 quod nocendi causa portatum est.

EXPLIC : TITULUS DE SICARIIS

ET HOMICIDIS CASU UEL UO 15

LUNTATE : | İNCİP DE ATROCI

Kp̄ dcvm̄: Moyses dicit: [INTURIA] Ex. 21.18

Si autem contenderint duo uiri et pcusserit alter
 alterum lapide aut pugno et non fuerit mortuus de
 cubuerit autem in lectulo. et si surgens ambulauerit 20
 homo fortis in baculo sine crimine erit ille qui eum
 pcusserat preter accessionis eius mercedem dabit ęa

Line.

1. *First part is obliterated, seems to be cornelia cornelia, Cp. p. 5 first part, line 1.*
4. *ciuili, last s obliterated. pacto, read facti.*
5. *qui, read quae.*
- 6 and 7. *distinctionem, read distinctione.*
7. *ad read an.*
9. *quod, read qui.*

Line.

10. *ageret, read gerit; for uideatur, uidetur.*
- 11 and 12. *appellationem, read appellatione.*
12. *omnem, read omne.*
17. *inturia, read iniuria. Observe in Codex marginal reference to Scriptural text by a much later hand.*
22. *fortis, read foris (Pithou according to Septuagint),*
23. *ęa, read ei.*

Lepidoptera: *Pieris* sp. al. piavus

multis liquidis in argenteo stercore

Parianus libro octavo nono. secundofub titulo

ULPIANUS LIBRO XVIII AD EDICTUM SUPER TITULO

h^o Dexm. Paulus Liber singularis & recedat

et medico impensas curationis. Kp̄ dcx. ULPIANUS
LIBRO REGULARIS SUB TITULO DE INIURIIS;

Iniuria si quidem atrox id est graui [rerum non sine iudicis]
arbitrio extimatur. atrocem autem estimare so- 5
lere pretorem adque collegi ex facto ut puta si uerbe
ratus uel uulneratus fuerit et reliqua: Kp̄ dcxi.

PAPIANUS LIBRO DEFINITIONUM: secundo sub titulo
de iudicatis phominē liberum noxię deditum si tantū
adquisitum sit quantum damnum dedit manumitere
cogendus est a pretore qui noxa et ęditū accepit. sed fidu 10
cię iudicio non tenetur. Kp̄ dcxi.

ULPIANUS LIBRO XVIII. AD EDICTUM SUB TITULO
si fatebitur iniuriam occisum esse in simplum. et cum
diceret rupisse eum utique accipiemus qui uulnerauerit
uel uirgis uel loeris uel pugnīs cedit uel telo cum alio uis 15
genere cederet hominis corpus uel tumorem fecerit
uel ita demum si damnum datum est. et cetero si in nullo
seruum p̄t̄io uiliorem deteriore uę fecerit
ad aquiliam cessat iniuriarumque erit agendum ergo
et si p̄t̄io quidem non sit deterior factus seruus 20
uerum sumptus in salute ęius et sanitate facti sunt in
haec nec mihi uideri damni aquilia lege posse.

KP. DCXIII; PAULUS LIBER SINGULARI ET TITULO

De iniuriis generaliter dicitur iniuriam omne quod non
iure fit specialiter alia est contumelia quā grecia 25

Line.

2. regularis, *read* singulari.
3. graui rerum non *M. reads* graui non est,
4. extimatur = aestimatur.
5. adque = atque. collegi *or* colligi, *both in Codex.*
6. *insert* quis *before* fuerit (*V. W.*).
7. Papianus, *read* Papinianus.
8. noxię, *read* noxae.
9. damnum, *read* dampni. manumitere = manumittere.
10. noxa et ęditū, *read* noxae deditum (*W.*).
13. iniuriam, *read* iniuria.

Line.

15. *for* loeris *read* lorīs; *for* cedit, caedit; *and for* cum, *read* quoue (*Lachmann*).
16. cederet *or* cederit, *read* sciderit (*Lachmann, cf. Digest, scinderet*).
17. uel, *read* sed, *and for* et cetero, ceterum.
19. ad aquiliam, *read* Aquilia.
21. salute, *read* salutem. sanitate, *read* sanitatem.
22. *before* posse, *supply* agi.
23. liber, *read* libro.
24. iniuriam, *read* iniuria.
25. grecia, *read* Graeci.

Inlunam hominum recte significat. Inlunam
 omnibus enim tenet quod semper dicitur in
 sit idque non nisi de cuius littera est hoc educatum
 Inlunam impetum que contumeliae causat. fit autem Inlun
 nam uel in corpore ducere dimus uel uerbis dum conuictu
 pectimur uel cum dignitas leditur uel cum peccator ac
 uel propter hoc ac comites adducuntur Inlunam acco
 ut legimus est eum honorifice legitima elegendo
 decem tabularum quibus Inlunam transierit eumque
 gna uel ad Inlunam po. na subit. Inlunam ad Inlunam
 et ceteros seruo. Ch. possum subuocari. Inlunam quorum
 Ep. de xiii. Hoc op paulus eodem libro singu
 len sub titulo. quomodo Inlunam agatur qui
 autem Inluna in quid dicitur. ceterum dicitur qui Inlunam fu
 erunt. Et cetera non Inlunam ponat non minorem quam
 quanta uel ditionum fuerit ceterum licet quis uel nomen
 demonstrat Inlunam in quibus uel p. ditione Inlunam
 ut illud uel Inlunam comprehendat. Inlunam uel Inlunam
 aut Inlunam Inlunam Inlunam Inlunam Inlunam
 completi Inlunam Inlunam Inlunam Inlunam Inlunam
 et cum Inlunam Inlunam Inlunam Inlunam Inlunam
 Inlunam Inlunam Inlunam Inlunam Inlunam Inlunam

[adician uocant] nam dum pretor noster aduersum nos
 [pnuntiaret iniuriam] nos accepisse dicimus, unde appa
 [ret nos esse uerum] quod Labeo putabat aput pretorem
 iniuriam hybrin dumtaxat significare communem
 omnibus enim iuris est quod sempaduversus bonos mores 5
 fit. idque non fieri alicuius interest hoc edictum ad eā
 iniuriam ptinet quę contumeliae causa fit, fit autem iniu
 riam uel in corpore dum credimus uel uerbis dum conuitiū
 patimur, uel cum dignitas leditur uel cum patronae
 uel pretextote comites adducuntur. Iniuriarum actio 10
 aut legitima est aut honoraria legitima ex legem duo
 decim tabularum qui iniuriam alteri facit quinque ex ui
 ginti restertiorum poena subit quę lex generalis fuit libero
 trecentos seruo. CL. poenam subitor extertiorum
 Kp̄ dcxiiii: Idem paulus eodem libro singu 15
 lari sub titulo quemadmodum iniuriam agatur qui
 autem iniuria inquit aget certum dicat qui iniurię fac
 tum sit. et taxationem ponat non minorem quam
 quanti uadimonium fuerit certum dicit qui suo nomine
 demonstrat iniuriam. neque ita ut pdisiunctionē hoc, 20
 aut illud accidisset conprehendat. sed ut necesse habeat
 aut unam nominis suo re destinare. aut plures ita
 conpleti. ut omnes eas accidissee cogatur pbare
 certum autem an incertum dicat cognitio ipsius prę
 toris est demonstrata autem hoc loco pretor non 25

Before line 1 the following are to be supplied in the text from Justinian's Institutes (Book IV., Title IV.): — ὕβρις appellant, alia culpa, quam Graeci ἀδικία dicunt, sicut in lege Aquilia damnum iniuriae accipitur, alia iniquitas et iniustitia quam Graeci.

Line

Line

- | | |
|--|--|
| <p>1. dum, <i>read</i> cum; noster, <i>read</i> non iure (Just.).</p> <p>2. pnuntiaret, <i>read</i> pronuntiat.</p> <p>3. nos, <i>should be</i> non.</p> <p>4. hybrin, <i>observe Greek characters in margin.</i> communem, <i>read</i> commune.</p> <p>5. enim iuris, <i>read</i> iniuriis (Lachmann).</p> <p>7 and 8. iniuriam, <i>read</i> iniuria.</p> <p>9. credimus, <i>should be</i> caedimur (V. W.).</p> <p>8. uel cum, <i>read</i> ut cum (Digest). patro- nae, <i>read</i> matronae.</p> <p>10. pretextote, <i>read</i> praetextatae (W. Blume); adducuntur. <i>read</i> abducuntur.</p> <p>11. legem, <i>read</i> lege.</p> <p>12. ex, <i>read</i> et.</p> | <p>13. For restertiorum, <i>read</i> sestertiorum; for poena <i>read</i> poenam; for subit <i>read</i> subito, and before last word of line supply: "fuerunt et speciale uelut illa si os fregit" (Blume).</p> <p>14. Before seruo <i>insert</i> si. subitor ex tertiorum, <i>read</i> subito sestertiorum.</p> <p>17. For iniuria <i>read</i> iniuriarum; for inquit, inquit; for aget, agit; for qui, quid.</p> <p>21. accidisset, <i>read</i> accidissee.</p> <p>22. For nominis <i>read</i> nomine; for re, rem, and for destinare, designare.</p> <p>23. conpleti, <i>read</i> conplecti.</p> <p>25. demonstrata, <i>read</i> demonstrat.</p> |
|--|--|

nocem agere. si qualem patitur. non dicit quid dicit pugna. et
 tem corporis demonstrat. Equum in medio pugnae
 eto an fuisse an lapide sicut formula posita est. quod cum
 agem pugnae molae percussa est. illud non cogitur dicer
 de arte censimur. neque motu percussit. Insuper dicitur. In
 fametiam se esse de. & addit. & quem ced modum Infe
 mectissit. sicbum & sermone concepta est quod numedum
 nigidum. illum inmisit. aulo ugetio Infe mecti causa.
 k p oxxv. Paulus libro sententiarum sub aulo
 ad legem. Corneliam desicinis & beneficis.
 causamoris idonea non uidetur. cum cesus homo post
 aliquos dies officium diuiterne uris reatens decessit. mi
 forae fuerit ad necem cesus. ut legat. uoluerat. uoluerat.
 k p. III. cōs. k p dxxvi. Incipit de iure & sebi iura
 dominorum. moyses dicit

Siquis percussit seruum aut ancillam uirga & mortui
 fuerit Inimicibus eius iudicio iudicetur. quod si sup
 uerit die uno aut duobus non iudicabitur. p. k. u. d. m.
 ipsius est. k p dxxvii. Paulus libro sententiarum
 sub aulo ad legem. Corneliam desicinis & beneficis
 dicit seruus si p. legi defecerit. iussu dolo p. i. d. d. m.
 homicidii. p. i. d. d. m. non potest post hunc modum d. m. castigen
 di. Insuper. p. i. d. d. m. p. i. d. d. m. p. i. d. d. m. p. i. d. d. m.
 k p dxxviii. Ulanius lib. octauo de officio pro

uocem ageritis sed qualem [formulam edat certum]
 non dicit qui dicit pulsatum si [uerbe ratus sed et par]
 tem corporis demonstrat et qu[em in modum pugn]o pu
 to an fuste an lapidé sicut formula posita est. quod auli
 agerii pugno mola pcussa est illud non cogitur diceret 5
 dextra an sinistrā. ne qua manu pcussit ita si dicat. in
 famatum se esse debet addiceret quemadmodum infa
 matus sit. sic enim et fermula concepta est quod numedius
 nigidius illum inmisit aulo agerio infamandi causa;
 k̄p̄ dcxv. Paulus libro sententiarum sub titulo 10
 ad legem corneliam de sicariis et beneficiis.
 causa mortis idonea non uidetur cum cesus homo post
 aliquos dies officium diuiterne uite retinens decessit. nisi
 forte fuerit ad necem cesus aut letaliter uulneratus;
 k̄p̄ iii cons: k̄p̄ dcxvi. Incipit de iure et sebitia 15
 dominorum moyses dicit,

Si quis pcusserit seruum aut ancillam uirga et mortuus
 fuerit in manibus eius iudicio uindicetur. quod si super
 uixerit die uno aut duobus non uindicabitur pretiū enim
 ipsius est; k̄p̄ dcxvii: Paulus libro sententiarum 20
 sub titulo ad legem corneliam de sicariis et ueneficis
 dicit seruus si plagis defecerit nisi id dolo fiat dominus
 homicidii reus non potest postulari modum enim castigan
 di et in seruorum quohercitionē placuit temperari
 k̄p̄ dcxviii: Ulpianus lib octauo de officio pro 25

Line.

- 1 and 2. parts that are faint seem identical with similar parts, page 12, left hand side, Codex p. 163.
1. ageritis, *read* agentis. After qualem *supply* formulam edit certum (V. W.).
- 3 and 4. puto, *read* puta.
4. posita, *read* proposita.
5. mola, *read* mala; diceret, *read* dicere.
6. For ne qua *read* nec qua; for pcussit, percussa sit *and* for ita, item.
7. addiceret, *read* adicere.
8. For fermula, *read* formula; for numedius, *read* numerius.

Line.

9. For nigidius *read* negidius. for il lum inmisit *read* libellum misit (M. foll owing Vonck).
11. beneficiis = ueneficis.
12. cesus = caesus.
13. For aliquos *read* aliquot, *and* for diuiterne, diurnae.
15. K̄p̄ III, probably intended by scribe to indicate Titulus III. cons = constitutio, but there is no reason for its presence. sebitia = saeuitia.
20. After sententiarum, Blume inserts quinto.
24. quohercitione = coercitione.

... dominus in
... carpmque viola
... pueri ... resens
to diumpu ... mercennum ... berqce
meceffactum ... rescripti uerba ...
Hec sunt dominorum quidam potestatem in se
uos suos in libertatem ... nec unquam hominum
lusuum detrahi. sed dominorum inter est ne auxilium
contrahere utiam uel fecerim uell intolerabile in iuriam
denegetur. his qui siluam depreccatur. ideoque cognosce
de querellis illorum quibus familiae lulis abini cedat tuam
confugerunt. & si uel durius haberi quicquid uell in se
mis in iure cedat feceris cognoueris ut in iure. ut in po
atam sauin non se uerentur: quod si me constituti
fructum peccerit scilicet me admissum se uerius fecerit
hep de x. **D**iuus Ricem cedat uis umbram
quendam mece trone. nec in quinque annis relegauit
quod de leuissimis causis ancillas cececiis aratate
hep de x. **I**tem diuus prius ad luellum alfi luli
rescriptis hanc uerba seruorum obsequium non solum
impensio. sed & moderacione. & sufficiantibus proutis &
lustis operibus contineri oporere itaque. & ipse curare
debet iure hac temperare. & uos ita esse. ut & facili
requirere et possit. nisi peccerit uell in peccente in
plandus esse. ut & in non in diminutionem seruicium.

[consulis sub titulo de domin]orum seuitias si dominus in
[seruum saeuierit uel] ad pudiciam turpemque uiola
tionem compellat que sint partes presidis ex rescrip
to diui pii ad aurelium marcianum pconsole betice
manifestatur cuius rescripti uerba. k^p dcxviii 5

Hec sunt dominorum quidem potestatem in ser
uos suos inlibatam esse oportet ne cuiquam hominum
ius suum detrahi. sed dominorum interest ne auxilium
contra seuitiam uel famem uel intolerabile iniuriam
denegetur. his qui si iuste deprecantur. ideoque cognosce 10
de querellis illorum qui ex familia Iuli sabini ad statuam
confugerunt, et siue durius habiti quam equum uel infa
mie iniuria adfectos cognoueris ueniri iubet. ut in potes
tatem saui non reuertantur. quod si mee constitutioni
fraudem fecerit sciet me admissum seuerius executu^r: 15
k^p dcxx. Diuus etiam adrianus umbram
quandam matrona, nam in quinquennium relegauit
quod ex leuissimis causis ancillas atrocissime tractare
k^p dcxxi: Item diuus pius ad liuellum alfi Iuli
rescripsit hec uerba seruorum obsequium non solum 20
imperio, sed et moderatione. et sufficientib³ prei³utis et
iustis operibus contineri oportet itaque et ipse curare
debet iuste hac temperare, et uos tractare. ut et facili
requirere eo possit nisi apparuerit uel inparente in
pendiis esse. uel atrocio^rem dominationem seuitiam 25

Line.

1. *The words in MS.* Iulia de adul[terii]s
do not belong here, but to folio 163,
right hand side; instead supply as
above. seuitias, read saeuitia.
2. *The words secundo uer in MS, also
belong to folio 163, right hand side.*
pudiciam, read inpudiciam.
4. pconsole, read proconsulem. betice
= Baeticae.
7. for ne cuiquam, read nec cuiquam.
10. qui si, omit si; iuste, omit cedilla.
11. illorum, read eorum. (W. Dig.)
12. for siue read si uel; for habiti, habitos;
and after equum supply est.
- 12 and 13. infamie, read infami.

Line.

13. ueniri, read uenire; and for iubet in,
iube ita ut (Digest).
17. matrona nam, read matronam.
18. tractare, read tractaret.
20. Before hec insert in.
21. sufficientib³ = sufficientibus. prei³utis =
praebitis.
23. for debet read debes; for hac temperare,
ac temperate; for et uos, tuos (W.),
and for et facili read ex facili (Lach
mann).
24. for eo possit nisi read eos possis ne si
(Pithou); and for inparente, in parem
te (Pithou).
25. atrocio^rem.....seuitiam, read atrocio^re
.....saeuitia (Lachmann).

Ac et cetera necessaria. **CONTRA ACCIDENDOS** **PR**
cedendos eos compellere. **CONTRA ACCIDENDOS**
PR **DE XXII**. **CRECORIANUS** **LIB. XVIII**. **AB**
titulo de accusacionib; **IMPP. DIOCLICIANUS & MAXI**
MICENUS **AUGUST** **AUS** **ELIO** **SECCACOMILIA** **CUM** **SERUUM**
CAUUM **EGYPTI** **GR** **AVI** **TER** **OP** **PESSUM** **FACTI** **MUNUS**
IMPLESS **EP** **PO** **NCES** **PP** **TR** **IM** **MODER** **ICATEM** **CESTIG** **ICATONE**
EDUMING **AUS** **ATIONEM** **EMER** **GERE** **IM** **NO** **CI** **AT** **VER** **CA** **IO**
CINUS **FIDU** **CI** **TEM** **GENS** **NON** **PI** **MI** **AT** **IT** **PR** **OP** **NON** **DE** **CE** **CE** **MB**
DIOCLITIANO. **AN** **III**. **ET** **ARISTONE** **CONSS** **III**;

EXPL **TITULO** **DE** **DOMINORUM** **SE** **UR** **TI** **CO**
HIBENDA. **CONSS** **III**; **INCIP** **DE** **TOUL** **TERIO**
MOYSES **DIXIT**: **PR** **DE** **XXIII**;

Quicumque moechatus fuerit cum muliere proximi
sui mortali morietur quia moechatus fuerit. & qui
moechatus fuerit quod si aliquis seduxerit uirginem
non desponsatam & superauerit eam docuit eam
sibi in uxorem quod si resistuerit peccator eius & noluerit
scire de se illi uxorem pecuniam inferat peccati in
quemcumque est dos uirginis. **PR** **DE** **XXIII**.

Paulus libros singulans de adulteris sub titulo bre
uium interpretacionem de adulteris quo hereticis
peccaturus per se am acceptam item dicit ordinem
que legis seruare. & quidem primum cepit legis

exercere necesse habeat [p consul uc ne quid] tumultuosius
 contra accidat preuenire se et ex mea iam auctoritate
 ad alienandos eos compellere grauiore et romulo C N S,
 Kp dcxxii GREGORIANUS Libro xviii. sub
 titulo de accusationib; Impp. dioclicianus et maxi 5
 mianus august aurelio sacro militi cum seruum
 tuum egritudinis grauius oppressum fati munus
 implesse pponas ppter inmoderatam castigationē
 calumne causationem emergere innotitiae ratio
 cuius fiduciam geris non pmittit PROP NON DECEMB 10
 DIOCLITIANO. ā III. ET ARISTONE CONSS IIII.
 EXP L TITULO de dominorum seuitia co
 hibenda. cons IIII. Incip de adulterio
 Moyses dixit. Kp dcxxiii :
 Quicumque moechatus fuerit cum mulierem pximi 15
 sui mortem moriatur qui moechatus fuerit et quē
 moechata fuerit. quod si aliquis eduxerit uirginē
 non desponsatam et stuprauerit eam docuit eam
 sibi in uxore. quod si rennuerit pater eius et noluerit
 eam dare illi uxorem pecuniam inferet patri in 20
 quantum est dos uirginis. Kp dcxxiiii.
 PAULUS libro singularis de adulteris sub titulo bre
 uem interpretationem de adulteris quohercendis
 facturus pipsam capitam ire maluit ordinem
 que legis seruare. et quidem primum caput legis 25

- | | |
|---|--|
| Line | Line |
| 2. After auctoritate add te (Lachmann). | 13. cons IIII. Cf. page 19, line 17, where Kp indicates titulus. |
| 3. grauiore et romulo, read Glabrone et Homullo. | 15. mulierem, read muliere. |
| 5. dioclicianus = Dioclitianus. | 17. eduxerit, „ seduxerit. |
| 6. August = Augusti. | 18. docuit, „ dotabit (W. following Septuagint). |
| 7. After tuum supply ui. | 22. singularis, „ singulari. |
| 9. causationem, read accusationem, and for innotitiae, innocentiae. | 23. interpretationem; after this, Huschke adds legis Iuliae. quohercendis = coerccendis. |
| 11. aristone, read aristobulo, and omit IIII. | 24. pipsam capitam should be per ipsa capita. maluit, read malui. |
| 12. titulo, read titulus. | |

...bus legibus solusbus cecrograt
 ...fecerit filios suos quas
 imp... in eoque aucator e cum in po
 ...effect uero in mano conuenerit aduterum do
 ...usque gñer us suideprehenderet in quibetam remiso
 ...um cedhibuent. uatit pccater cum ceculuterum sine
 fraude occidat. pccat filiam incontinenti occidat
 Inuidia ceculuterum filiam qui aduterum deprehensum occide
 nt. & incontinenti filiam licito luse hoc pccatum;
 kēp dēxxv. MARCELLUS libro xxxi. Digestoni
 scribit ceculuterum quoque pccat posse interficere
 uel conu uerum uel pccatronum suum in filiam adute
 rum deprehendent eodē libro MARCELLUS pccat.
 sed si filiam non interfecerit. sed solum aduterum.
 homicidii reus est. sed inter uellum filiam interficere
 uatit. unde est. nisi psequatur ille interfecerit.
 continuacionem huius ammi uidetur legis aucatori.
 cecis fecisse? kēp dēxxvi. Ideo paulus eodē
 singularem libro & titulo cecis. uatit enumerantur
 psonas. quas uero liceat occidere in aduterio depre
 hensam uxorem. quamuis uxorem non liceat ego
 secundum leges uero & iacem filio familiaris pmiat.
 aur & iacem misus deprehensum aduterum in
 aer pccat seruum & cum qui aucator ambitu roga
 tus est ad gladium uel & iacem illum qui opstassus.

[iulię de adulteris prioribus] legibus pluribus abrogat
[secundo uero capite pmittit] pater filias suas quas
[in potestatem habet] ut in ea quę auctore cum in potes-
tate esset uero in mano conuenerit adulterum do-
mui suę generiue sui deprehenderet in quem eam rem so- 5
cerum adhibuerit. ut his pater cum adulterum sine
fraude occidat ita ut filiam incontinenti occidat
inuidia autem filia qui adulterum deprehensum occide-
rit. et in continenti filiam licito iure hoc factum :
Kp̄ dcxxv. marcellus libro xxxi. digestorū 10
scribit auctoritate quoque pater posse interficeret
uel cons uerum uel patronum suum in filiam adulte-
rium deprehenderit eodem libro marcellus pbat.
sed si filiam non interfecerit. sed solum adulterum
homicidii reus est. sed interuallum filiam interficerit 15
tant unde est . nisi psequatur illam interfecerit
continuationem enim animi uidetur legis auctori-
tatis fecisset; Kp̄ dcxxvi: Idem Paulus eodē
singulari libro et titulo certę autem enumerantur
psonę quas uero liceat occidere in adulterio depre- 20
hensam uxorem. quamuis uxorem non liceat ergo
secundum leges uero etiam filio familias pmitti
tur etiam domi suę deprehensum adulterum in-
terficere seruum et eum qui auctoramento roga-
tus est ad gladium uel etiam illum qui operas suas 25

Line.

1. iuliae de adul[teris] regarded by M. as an interpolation. abrogat, read obrogat (Scaliger).
2. pater, read patri; insert before filias suas quas, si in, and read filia sua quam.
3. potestatem, read potestate; for ut read aut, and supply eo before auctore.
4. uero, read uiro; for mano, manū.
5. in quem, read issue in.
6. his = is; cum, read eum.
8. inuidia, Huschke reads in uidua, but M. in sui iuris.
11. After auctoritate quoque add legis (Cujas); pater posse interficeret, read patrem posse interficere.

Line.

12. cons, read consularem; uerum, read uirum; for in filiam, adulterium read in filia adulterum, and before in insert si eum (Huschke).
15. sed interuallum, read et si interuallo interficerit, should be interfecerit.
16. tant unde, read tantundem.
17. continuationem, read continuatione.
- 17 and 18. auctoritatis, read auctoritate.
18. fecisset, read fecisse.
20. uero = uiro.
- 20 and 21. deprehensam uxorem, read deprehensa uxore.
22. uero = uiro.
23. etiam domi, M. omits etiam.

ut cum bestiis pug[naret locauit sed et iudicio publico dam]
 natum licere interficere in adulterio deprehensum uel liber]
 tinum uel suum uel paternum [et tam ciuem romanū]
 quam latinum. sed et patris et matris et filii et filię libertū
 pmittitur occidere quo loco. et deditus haberetur debet 5
 autem p[ro]fiteri apud eum cuius iurisdictio est eo loco ubi occi
 dit et uxorem dimitteret. quod si non fecerit inpune non
 interficit. sciendum est autem diuum marcum et commodū
 rescripsisset eum qui adulterum inlicitę interfecerit le
 uiori poenam puniri. sed et magnus antoninus pepercit 10
 eas qui adulteros inconsulto calore ducti interfecerunt
 et reliqua: Kp̄ dcxxvii: IDEM PAULUS EODEM
 libro singulari et titulo; Qui iure marti uel patris qui
 accusat potest, et sine calumnię poena uinci si iure extranei ac
 cusat potest calumnię poena puniri. sed tantum post duo men 15
 ses. intra quattuor menses utiles experitus licet talis sit qui
 alia accusare non possit ut libertinus aut minor uiginti quin
 que annorum aut infamis tamen accusationem admitti
 tur ut et papianus libro xv scripsit; Kp̄ dcxxviii. Papi
 anus libro xv responsorum; Sub titulo ad legem iuli 20
 ani de adulteris cuius romanus qui sine conuiuio sibi pere
 grinam in matrimonio habuit iure quidem mariti eā
 adulteram non postulat sed ea non opponetur infami
 a uel quod liberatinus rem sextertiorum treginta miliū
 aut filium non habuit p[ro]p[ri]ā iniuriā persequenti; 25

Line.

1. At end of line in MS. deo seruabat is foreign matter.
2. licere, *read* licet.
5. deditus = deditiu haberetur, *read* habetur.
7. dimitteret, *read* dimittere
9. rescripsisset, *read* rescripsisse. inlicitę, omit cedilla.
10. poenam, *read* poena.
11. eas, *read* eis (*Huschke*). or si (*W*)
13. marti, *read* mariti.
15. tantum; *M* has tum,

Line.

16. experitus, *read* expertus.
17. alia, *read* alias. posit = possit.
- 19 and 20. Papianus = Papinianus.
- 20 and 21. Iuliani, *read* Iuliam.
21. After qui *M.* adds ciuem Romanam. conuiuio = connubio. sibi, *read* siue (*M.*).
22. iure *read* iure.
23. ea, *read* ei.
24. sextertiorum = sestertiorum. treginta, e for i.

Papius lib. singulari & articulo
 de paterfamilias qui occidit filium. unde dicitur iurem. q.
 si paterfamilias filium suum seuerus quoque & Antoninus iure
 rescypserunt. **lp de xxx. Papius libro**
 singulari. de adulteris queritur an pater emancipa-
 tae filiam iure pateris accusare possit respondit occi-
 dendi quidem facultatem locatur eam filiam qui
 habet in potestatem autem auctorem in manu conue-
 nit. sed accusare iure pateris. ne quidem emancipatam
 filiam pateris prohibetur. **lp de xxxi. Papius eodem**
 singulari & articulo: Cum pater lre regiae dedit in filia
 utq. ne quisque potestatem quod bonum fuit legem con-
 prehendit. ut potestati pater & emancipam occidendi
 uelle mihi scribere. nam si cupio respondit. num
 quid contrario prestat nobis argumentum. haec ad lre
 ego. ut non uideatur lre non habenti dedisse. ut uide-
 tur maiorem equitatem ductus adulterum occidis-
 se. cum & filius pepercerit. **lp de xxxii.**

Idem si pater qui adulterum occidit & filius suus
 pepercit queritur quid aduersus eum sit statutum.
 respondit. sine dubio iste pater homicida est. igitur
 atquebitur legem cornelianam de sicariis plene si filiam
 non uoluerit pateris. sed casus uita est. non minima
 habebit defensionem pater quod foras filiam. num
 lre iaceponit homicidam. si de malo homicidium

Paulus libro singulari et titulo

[qui supra in] uxorem adulterum uindicatur iure mari
 ti [non etiam spon]sam seuerus quoque et antoninus ita
 rescripserunt. Kp̄ dcxxx, PAPIANUS LIBRO
 singulari, de adulteris querebatur an pater emancipa 5
 ta filiam iurē patris accusare possit respondit occi
 dendi quidem facultatem lex tribuit eam filiam quā
 habet in potestatem aut eum auctorem in manū conue
 nit. sed accusare iurē patris. ne quidem emancipatum
 filiam pater phibetur, Kp̄ dcxxxī. PAPIANUS EODĒ 10
 singulari et titulo: Cum patri lex regia dederit in filiā
 uite, nechisque potestatem quod bonum fuit legem con
 prehendit, ut potestas fieret etiam filiam occidendi
 uelle mihi rescribere, nam scire cupio respondit, num 15
 quid ex contrario prestat nobis argumentum. hec adiec
 tio, ut non uideatur lex non habenti dedisse ut uidea
 tur maiorem equitatem ductus adulterum occidis
 set, cum nec filiē pepercerit. Kp̄ dcxxxii;
 Idem si pater qui adulterum occidit et filiē suē 20
 pepercit quero quid aduersus eum sit statuendum,
 respondit, sine dubio iste pater homicida est. igitur
 tenebitur legem corneliam, de sicariis plane si filiam
 non, uolūtate patris. sed casu seruata est, non minimā
 habebit defensionem pater quod forte filiam. nam
 lex ita ponit homicidam. si dolo malo homicidium 25

- | | |
|--|--|
| ine. | Line. |
| 2. qui <i>missing in MS.</i> | 14. uelle, <i>read</i> uelis (<i>Cujas</i>). |
| 2. adulterum, <i>read</i> adulterium. | 16. <i>After</i> dedisse <i>M. supplies</i> sed occidi eam cum adultero iussisse. |
| 5 and 6. emancipata, <i>read</i> emancipatam. | 17. maiorem equitatem, <i>read</i> maiore aequi- tate. |
| 6. respondit, <i>read</i> respondi. | 17 and 18. occidisset, <i>read</i> occidissee. |
| 8. <i>After</i> aut <i>supply</i> quae; eum auctorem. <i>read</i> eo auctore. | 19. qui, <i>read</i> quis. |
| 9. emancipatum, <i>read</i> emancipatam. | 22. legem corneliam, <i>read</i> lege Cornelia. |
| 10. <i>After</i> eodē <i>add</i> libro. | 23. uolūtate = uoluntate. |
| 11. et titulo, <i>M. regards as an interpolation.</i> | 24. <i>After</i> forte <i>supply</i> fugit; filiam, <i>read</i> filia. |
| 12. nec hisque, <i>read</i> necisque, and for legem lege. | 25. ponit, <i>read</i> punit. |
| 12 and 13. comprehendit, <i>read</i> comprehendi. | |

peccatum fuerit.
 p. l. c. q. u. i. c. u. l. u. i. f. f. e. r. e.
 l. p. d. x. x. i. i. p. a. p. i. a. n. u. s. i. d. e. m. q. u. a. n. t. u. m. i. n. o.
 y. n. s. u. a. m. i. n. o. d. u. t. t. e. n. o. d. e. p. r. e. h. e. n. s. u. m. o. c. c. i. d. i. t. a. n. t. l. e. g. e.
 d. e. f. i. c. a. n. i. s. i. n. c. i. d. i. t. q. u. i. r. e. r. e. s. p. o. n. d. i. t. n. u. l. l. e. p. e. c. c. a. t. e. l. e. g. i.
 m. a. c. h. a. c. o. u. r. o. s. e. m. o. c. c. i. d. e. s. e. c. o. n. c. e. d. i. t. u. r. q. u. e. r. e. a. p. a. c. e.
 a. c. c. o. n. t. r. a. l. e. g. e. m. p. e. c. i. s. s. e. e. u. m. n. o. n. d. u. b. i. t. a. n. t. u. r. n. o. n. a. n.
 h. i. c. i. t. u. r. s. e. d. s. i. t. e. n. o. n. e. a. c. c. a. t. u. s. n. o. n. h. i. s. q. u. e. a. l. i. q. u. i. d. e. u. r.
 h. o. n. e. s. t. i. m. o. e. t. l. o. n. p. p. i. a. t. e. a. n. t. i. m. b. i. g. n. a. t. u. r. s. i. c. i. d. i. c. t. n. o. n.
 d. u. b. i. t. a. n. t. u. r. i. n. o. n. q. u. i. a. n. t. h. o. m. i. c. i. d. e. p. o. n. i. t. u. r. c. a. p. t. e.
 u. e. l. d. e. p. o. r. a. t. i. o. n. e. s. i. d. u. s. q. u. i. a. c. c. e. d. e. n. t. u. m. p. o. e. n. i. t. e. n. t. i. s. t. a.
 a. u. t. u. r. l. p. d. x. x. i. i. i. i. t. a. t. i. n. s. i. d. e. m. a. n. c. i. p. i. s. a.
 c. c. u. s. a. t. i. s. i. n. c. e. n. t. i. s. u. e. l. p. e. c. c. a. t. i. s. a. c. c. u. s. a. n. t. e. q. u. e. s. t. i. o. n. i. b. u. s. h. a.
 b. i. d. e. m. p. e. c. c. a. m. e. s. s. e. a. n. t. i. d. e. m. d. e. a. t. r. e. n. e. o. a. c. c. u. s. a. t. o. r. i.
 p. r. i. u. a. t. i. q. d. e. b. e. c. c. e. t. q. u. e. r. o. r. e. s. p. o. n. d. i. t. p. o. t. e. s. t. u. i. d. e. r. i. g. a.
 p. e. c. c. a. t. i. o. f. u. i. s. s. e. p. r. i. u. a. t. i. n. d. i. i. s. t. i. p. s. o. n. i. s. d. e. d. e. r. i. u. s. q. u. e. s. t. i. o.
 n. o. n. h. i. c. e. b. e. r. e. u. a. d. d. i. g. n. u. s. d. o. l. o. r. d. e. m. a. n. i. u. s. i. u. i. t. e. m.
 i. n. l. u. n. a. m. l. e. g. e. d. o. m. u. s. n. o. n. t. r. a. n. s. l. o. c. a. t. u. s. p. s. e. q. u. e. s. t. i.
 a. t. u. r. s. e. d. q. u. i. n. o. n. f. a. c. i. l. e. a. c. c. e. d. e. d. e. l. e. c. t. u. m. s. i. n. e. m. i. n. i. s. t. e. r. o.
 i. s. t. u. o. r. u. m. a. d. m. i. n. i. s. t. e. r. o. c. r. e. d. i. t. u. m. e. s. t. r. a. t. i. o. e. o. p. d. u. x. i.
 u. a. l. i. c. e. m. d. e. a. t. r. e. n. e. o. a. c. c. u. s. a. n. t. e. m. a. n. c. i. p. i. a. q. u. e. s. t. i. o. n. i.
 a. o. r. n. i. s. t. e. r. o. r. u. m. s. u. b. i. c. e. r. e. n. t. u. r. a. u. d. i. c. i. b. u. s.
 l. p. d. x. x. x. v. p. a. u. l. u. s. l. i. b. e. r. s. e. n. t. i. b. i. t. i. a. r. u. m.
 s. u. b. a. q. u. i. l. o. d. e. c. u. l. t. e. r. i. s. p. u. n. i. t. u. r. a. m. a. d. o. p.
 t. u. m. q. u. e. n. i. c. e. d. u. l. t. e. r. d. e. m. c. a. m. p. i. l. i. c. e. c. u. i. u. s. q. u. e. s. t. i. o. n. i.
 a. u. d. i. c. i. b. u. s.

factum fuerit. hic au[tem pater non ideo seruauit]
 filiam quia uoluisset qui oc[cidere eam non potuit.]
 Kp dcxxxiii. Papianus idem si maritus uxo
 rem suam in adulterio deprehensum occidit. an in lege
 de sicariis incidit quero respondit. nulla parte legis 5
 marito uxorem occidere conceditur. quare apar
 te contra legem fecisset eum non dubitantur. non am
 bicitur. sed si deponat tractas. non hisque aliquid eius
 honestimo calori pmittetur ambigitur. sic dicit. non
 dubitantur, ut non quasi homicida poniatur capite 10
 uel deportatione, sed usque ad exitium poena eius sta
 tuitur. Kp dcxxxiiii. Item sic de mancipiis al
 terius marito uel patre accusante questionem ha
 bendam palam esse an, idem extraneo accusatori
 pmitti debeat quero respondit potest videri ea 15
 ratio fuisse pmittendi istis psonis de seruis questio
 nem habere. ut diligentius dolorem animi sui item
 iniuriam lex et domus non translatitque psequeren
 tur, sed qm non facile tale delictum sine ministerio
 seruorum admitti creditum est ratio eo pduxit 20
 ut etiam extraneo accusante mancipia questioni
 tormentorum subicerentur a iudicibus.
 Kp dcxxxv. Paulus liber sententiarum
 sub titulo, de adulteris pmittitur tam adop
 tivo quam adulterom cum filia cuiusque digni 25
 tatis

Line.

2. uoluisset, *read* uoluit, *and add* sed, *reading* qui as quia.
3. Papianus, *M. omits*
4. deprehensum, *read* deprehensam; *for* lege, legem.
5. incidit, *read* incidat.
- 6 *and* 7. aparte, *read* aperte; *for* fecisset, fecisse.
- 7 *and* 8. *Omit* non dubitantur; ambicitur, *read* ambigitur.
8. deponat, *read* de poena, *and for* hisque, *read* inique (Müller).
9. honestimo, *read* honestissimo; *for* pmittetur, permittitur.

Line.

- 9 *and* 10. ambigitur.....dubitantur, *omit* (V. W.).
10. poniatur = puniatur.
11. exitium. *read* exilium.
- 11 *and* 12. statuitur, *read* statuatur, *and for* item idem.
- 12 *and* 13. alterius, *read* alterutrius (V. W.).
14. esse, *read* est (Schulting).
18. lex et, *read* laesae (W.).
23. liber, *read* libro: *after* sententiarum, *supply* secundo (M.).
- 24 *and* 25. *After* permittitur *add* patri (Paulus), *and after* quam, naturali (V. W.).

in suam manu occidit
 filium in adulterio deprehendit
 et occidit. legi si peccatum est ut non possit occide-
 re punitur. tam in dicitur et ut occidat in
 adulterio deprehensus non alios quam infor-
 matus. in quo corpore questum faciunt seruos
 et in alios deceptores quod prohibetur occi-
 dere potest. in manu qui uxorem deprehensum cum
 adultero occidit quod hoc in peccato licet idolorum
 occidit. in manu punitur placuit occiso adultero dimit-
 tere si tamen meretur debet uxorem atque totam
 dote propter pacem. cum quo adultero. & in quo loco
 uxorem deprehendit. in uentrem adulteri uxore
 rem meritis tamen eundem adulterum meritis
 occideri potest. si eum domum suam deprehendat
 cum quo adulterio deprehensam uxorem non tamen
 eum dimiserit reum lenocini postulare placuit
 seruicium tamen meritis quam uxoris locum. ad utrumque
 torqueri possunt. nec in iustitia sub specie in punit
 accipit deattem uidebitur. & in titulo quinto
 in ep. de stupratoribus moyses dicit
 de xxxvi. lxx de xxxvi. Qui in anserit
 cum in senio in censione muliebri spernabitur
 est et in bono monatur reus. lxx de xxxvii.
 Paulus libro sententiarum suorum titulo

l. b. 261

leut. 20. 13.

[domi suę uel generi sui depre]hensum sua manu occidere
 filius familie [pater si] filiam in adulterio deprende
 rit uerbis quidem legis ppe est ut non possit occide
 re pmittitur tamen etiam ei ut occidat mari
 tus in adulterio deprehensos non alios quam infa 5
 mes. et eos qui corpore questium faciunt seruos
 etiam et liberos excepta uxore quam phibetur occi
 dere potest maritus qui uxorem deprehensum cū
 adultero occidit quia hoc impacientia iusti doloris
 admisit leuius puniri placuit occiso adultero dimit 10
 tere statim maritus debet uxorem atque ita tri
 duo pximo pfiteri. cum quo adultero, et in quo loco
 uxorem deprehenderit inuentam adulterio uxo Lib. 2, Ti. 26.
 rem maritus ita demum adulterum maritus
 occidere potest. si eum domui sue deprehendat 15
 eum qui in adulterio deprehensam uxore non sta
 tim dimiserit reum lenocinii postulari placuit
 serui uero tam mariti quam uxoris in causa adulterii
 torqueri possunt. nec his libertas sub specie inpun
 tatis datam ualebit Kp EXPŁ TITULO QUINTO 20
 INCIP DE STUPRATORIBUS MOYSES DICIT
 DCXXXVI, Kp dcxxxvi: Qui manserit Leuit 20: 13.
 cum masculo mansione muliebri aspernamentū
 est ambo moriantur rei sunt. Kp dcxxxvii
 PAULUS LIBRO SENTENTIARUM SUB TITULO 25

Line.

2. familie, *read* familias.
 6. questium, *read* quaestum.
 7. liberos, *read* libertos (*Pithou*).
 8. maritus, *read* maritum, *and* for depre-
 hensum, deprehensam.
 13 and 14. inuentam . . . uxorem, *read* in-
 uenta . . . uxore, *and insert* in before
 adulterio.

Line.

13. *Observe in Codex marginal reference
 to Paulus, by a later hand.*
 15. sue, *cedilla omitted.*
 19. specie = specie.
 20. datam, *read* data, *observe marginal
 reference by later hand.*
 22. *Observe in Codex marginal reference
 to Biblical quotation by later hand.*

deceduntur quimale...
 coepcepunetur qui volunt...
 que impurum peccatur dimidie par...
 multocatur. nec est membraum ei...
 cere licet hoc quidem luns est mentem...
 Imperatoris theodosii contritio ad plenum...
 hō d cxxxviii Theodosius...
 Theodosius & archadius augg adonatum uicariuntur
 bis rome non pati amur in-bis rome ut tamen omniū
 ma-a emdi uari esse minan. Inuiros pudoris contamina
 tione fedan. & res tellud ad pri cis conditor bus robur
 fractum ollar plebe ten uat um conuicium seculi uel
 conditorum. Inrogare uel p...
 hō d cxxxviii Nunc no uis laudanda igitur & pe
 nantia auacomner quibus plagiatorius luxur est uincor
 pur muliebriatē confirmum ceteri sexus decem nec
 peccantia nihilque discretum habere cum femini
 occupatos ut plagiator possit innocentos eodque om
 nibus seducator pudā dicere uiro rum lupanaribus spā
 ac me populo plan me undicibus & piabrat uniuo si
 intellegunt sacrosas cuneis sedebere hoipium uniuo
 me nec sine summo supplicio alicuius & petisse: sērum qui
 suum uirpā perdidit & pōp pōd mē iatome (nā) o
 minere & pōt q aulo desuprator bus. hō d c xl.
 Incip deinceps huiusmodi orationes dicit. Quiaque

L. c. 11. 9. 10. 11.

Leuit 20. 11
 Deut 22. 23

de adulteris qui mascul[um liberu]m inuitum stup[rauerit]
 capite punietur qui uolunt[ate sua stuprum flagitium]
 que inpurum patitur dimidia parte bonorum suorum
 multatur. nec testamentum ei ex maiore parte fa
 cere licet hoc quidem iuris est mentem tamen legis Moysi 5
 Imperatoris theodosii constitutio ad plenum secuta cognoscit
 Kp̄ dcxxxviii. item Theodosianus Imp̄p̄ Ualentianus
 Theodosius et archadius augḡ ad orientium uicarium ur
 bis romę non patiamur urbis romae uirtutem omniū
 matrem diutius effeminati in uiros pudoris contamina 10
 tione foedari et ageste illud ad priscis conditoribus robur
 fracta molliter plebe tenuatum conuicium seculi uel
 conditorum. inrogare uel printipium orienti;;;;;
 Kp̄ dcxxxviii ac iuc̄ NOUIS Laudanda igitur expe
 rientia tua omnes quibus flagitiosus luxus est uiri cor 15
 pus muliebriter constitutum alieni sexus damnare
 patientia nihilque discretum habere cum feminis
 occupatos ut flagitii possit inmanitas adque om
 nibus seductos pudet dicere uirorum lupanaribus spec
 tante populo flamme uindicibus expiabit ut uniuersi 20
 intellegant sacros̄c̄is cunctis esse debere hospicium uiril̄is ani
 me nec sine summo supplicio alienum expetisse ; sexum qui
 suum turpiter perdidisset p̄r̄p̄ p̄r̄d̄ maias rome in atrio
 minere Expt̄ titulo de stupratoribus. Kp̄ d̄cxl̄,
 Incip̄ de Incestis Nuptiis Moyses dicit : Quicūque 25

Line

6. cognoscit, *read* cognoscitur.
7. ualentianus = Valentinianus.
8. archadius = arcadius. augḡ, *read* auggg.
9. patiamur, *read* patimur; for urbis romae uirtutem *read* Urbem Romam uirtutem.
10. uiros = uiro.
11. ageste = agreste; ad for a.
12. seculi, *read* saeculis.
13. printipium, *read* principum.
14. iuc̄ NOUIS = iuc(undissime) nobis.

Line

15. L. 6 C. Th., lib. 9, Tit. 7, sed non adeo integer on margin by a later hand. uiri, M. reads uirile.
17. patientia = patientia.
18. possit, *read* poscit. adque = atque.
19. seductos, *read* eductos.
20. flamme, *cedilla wanting*.
21. sacros̄c̄is = sacrosanctis, *read* sacro-sanctum.
22. anime, *cedilla wanting*, *read* animae.
23. rome, *cedilla wanting*, *read* Romae.
24. minere, *read* Mineruae.

Line 25. Levit. xx. 4; Deut. xxii. 22, on margin by a later hand.

utroque peccatissimū pu
 moratū moratur. ambo
 reijunt. & quicumque concubuerit cum nūrusū
 moratū morantur. ambo eisunt.

l^p de xli. Ulpianus libro regulari de nup
 tiis sub titulo. Inter parentes & liberos cuius
 cumque gradus sit conubium non est inter cognec
 tos autem & transuerso gradu olim quidem usq;
 ad quatuor gradum matrimonia contrahi non pote
 rant nunc autem & tercio gradu licet uxorem ducere & fecerit
 cum fratri filia non etiam sororis nec ammat nec mat
 atram quam uis eo dem gradu sit. eamque non uera
 uel p^ruigna uel que nūrus uel socrus fut uxorem du
 cere non possumus si quidem quam non licet uxorem
 duxerit incestum in matrimonium contrahit ideo
 que liberis in p^roestitate eis non sunt. sed quasi
 uulgo conceptis p^ruigisunt. l^p de xlii.

Paulus libro sententiarum. de nuptiis sub titulo
 Inter parentes & liberos iure civili matrimonium
 contrahi non possunt. nec filiam sororis. aut nep
 otam uxorem ducere non possumus p^rne p^rae g^rat^ris.
 p^rae g^rat^ris h^ric & adoptiue cognatio impedit nuptias
 Inter parentes h^ric liberos omnimodo inter fratres
 ex alius quocumque capitis minutio non inter
 uenit. nec socrum nec nūrum p^ruignam. nec

[concupuerit] cum mulierem uxorem patris sui pu
[denda patris sui dē]texit mortem moriantur, ambo
rei sunt, et quicumque concubuerit cum nuru sua
mortem moriantur ambo rei sunt

Kp̄ dcxli. Ulpianus LIBRO Regulari de Nup 5
TIIS SUB TITULO. Inter parentes et liberos cuius
cumque gradus sit conubium non est inter cogna
tos autem ex transuerso gradu olim quidem usq 3
ad quartum gradum matrimonia contrahi non pote
rant nunc aut ex tercio gradu licet uxorem ducere sed tan 10
tum fratris filia non etiam sororis nec amitam nec mat
terram quamuis eodem gradu sint. eamque nouerca
uel priuigna uel que nurus uel socrus fuit uxorem du
cere non possumus si quis eam quam non licet uxorem
duxerit incestum matrimonium contrahit ideo 15
que liberis in potestate eis non fiunt. sed quasi
uulgo concepti spurii sunt. Kp̄ dcxlii.
Paulus liber sententiarum. de nuptiis sub titulo
inter parentes et liberos iure ciuili matrimonia
contrahi non possunt. nec filiam sororis. aut nep 20
tem uxorem ducere non possumus p̄neptę etatis.
ratio phibet adoptiua cognatio impedit nuptias
Inter parentes hac liberos omnimodo inter fratres
eatenus quatenus capitis minutio non inter
uenit. nec socrum nec nurum priuignam, nec 25

Line

1. mulierem uxorem, *read* muliere uxore.
5. regulari, *read* Regularum singulari.
- 5 *and* 6. de nuptiis sub titulo, *transpose*
to sub titulo de nuptiis.
7. sit, *read* sint.
11. filia, *read* filiam.
- 11 *and* 12. mätterram, *read* materteram.
12. eamque = eam quae.

Line

16. liberis, *read* liberi, *and for* eis, eius
(Ulpian).
18. liber, *read* libro; *after* sententiarum
add secundo, *and transpose* de nup-
tiis sub titulo *to* sub titulo de nuptiis.
21. *Omit* non.
23. hac = ac.
25. *Before* priuignam *insert* nec.

noui recte reliquenda
 non ducere hoc sicut et
 sed uel cognationem contrahit sicutam quae et
 remissio nullum lussu et ore ipse poeniam adductu
 legis lussu peccatur non sicut ducem lep dex lxx
Cyrogonus libro quinto de iuribus sub titulo de
 plurimulacrarum diocletianum et maximi in
 aeternam conlunationem grauitat panem conuictio
 lep dex lxx: exemplum adiecit diocletianum et maxi
 mianum nouissimorum caesarum quibus religiosi
 quem adhibuerunt eoque romanis legibus caesare sine
 cequesum comitate uenerabilia maxime uide
 tur adque quae nec religio seruanda dissimulat
 eoque acquibus de lussu etiam nesciens in
 quis commissis sunt non parat et credimus eum uel
 colubendae sunt uel dicitur uindictae in sinistre
 nondis ciplinae nostrorum amporum collocatione
 ita et in ipsos in maiorem deus romanorum
 ut si puerum fouentes adque pleccaeos pita
 rus esse non dubium est sicut et sub imperio
 gites pacem religiosam quae et quae etiam ex
 omnibus more colere per speremus utam in quod
 et impudendum quam maxime esse etiam in
 in carimoniae religiosae et quae legitime luxa
 disciplinam lussu uectis copulationem etiam

nouercam aliquando [citra] poenam in[cesti uxo]
 rem ducere licet, sicut nec amitam [aut materteram]
 sed uel cognatam contra interdictum duxerit
 remissio mulieris iuris errore ipse poenam adulterii
 legis Iulia patitur, non etiam ductam Kp̄ dclm. 5
 Gregorianus libro quinto de nuptiis, sub titulo exem
 plum litterarum dioclitiani et maximiani imp̄p
 talem coniunctionem grauiter puniri commemorat
 Kp̄ dclm: exemplum edicti dioclitiani et maxi
 miani nouillissimorum cesarum qm̄ piis religiosis 10
 que mentibus nr̄is eaque romanis legibus castę sanc
 tęque sunt contitute uenerabilia maxime uidē
 tur adque ęterna religione seruanda dissimulare
 ęaque a quibusdā in preteritum nefarię incestę
 que commissa sunt non oportere credimus ęum uel 15
 cohibenda sunt uel etiam uindicanda insurgere
 non disciplina nostrorum temporum cohortatur
 ita enim et ipsos inmortales deos romano nomini
 ut semp fuerint fauentes adque placatos futu
 rus esse non dubium est si cunctos sub imperio nr̄o 20
 gentes piam religiosasque et quietem et castum in
 omnibus more colere perspexerimus uitam in quo id
 etiam puidendum quam maxime esse censuimus. ut
 matrimoniis religiose adque legitime juxta
 disciplinam iuris ueteris copulatis tam ęorum 25

Line.

3. After *sed supply* qui affinem.
 4. remissio mulieris *read* remisso mulieri
 (V. W.).
 5. ductam, *read* ducta.
 6. de nuptiis sub titulo, *transpose* to sub
 titulo de nuptiis.
 8. puniri, *read* punire.
 9. dioclitiani = Diocletiani.
 10. nouillissimorum, u for b.
 11. nr̄is = nostris. eaque = ea quae.
 castę sanctę, *faulty cedillas*.
 12. contitute, *read* constituta, maxime
faulty cedilla.
 13. adque = atque.

Line.

- 14 and 15. *faulty cedillas in following words*: ęa (in ęaque), nefarię, incestę, que, ęum. 14 quibusdā = quibusdam: preteritum = praeteritum.
 15. ęum, *read* cum (V. W.).
 17. non, *read* nos (V. W.).
 19. fuerint, *read* fuerunt.
 19 and 20. futurus, *read* futuros.
 21. for gentes, *read* agentes (V.); religiosas-que, religiosamque (V. W.); quietem, quietam (W.); and for castum, castam.
 22. more, M. writes mere, *Huschke* more maiorum.
 23. maxime, *faulty cedilla*.

in coniunctione sequebantur
 reum deinceps seruare religionem
 non debatur. Insuper esse consuetum & honestum
 ac nec cōdi & incompotentes ipse purgatus sit.
 idem publici nostri maxime placuit ut scē
 necessitudinum nomine optineant apud asē.
 ad suos placem hanc religiosam consanguinitatem de
 bitam ecclesiasticam neque enim credere est eaque
 in preteritum ac compluri; constare esse commissā
 cum peccatum hac feracem promiscuo rēuocandū
 ciare conubio instinatum. Per cōdi libidinē sine
 ullo respectu pudoris hac pie acis intruerunt.
 sedque cumque ante hac uel in penam delinquenti
 quum uel ignoranti uariis hōc hōc in manu
 riam & in hētis in matrimoniu si uideretur admissa
 quamquam essent seuerissime iudicandae ac in
 contemplationē eis mētis nre ad indulgentiā
 uolumus pertinere; ita ac in ut quicumque in
 ante ac in tempus in hētis in cētis quē sēma
 arimonis polluerunt hac tenus adeprosse esse
 nrā indulgentiā sciet. ut post ac in nefaria
 facinorositatem quidā sibi gratulentur esse con
 cessōe sciant tamē non legitimos se suscepisse libe
 ros quos tam nefaria coniunctione gēnerunt
 ite hūm si & uade futuro quoque nemo audeat
 in frenatū cupiditatē obcedere. cum & sciant
 hāc precedentes admissores istius modicissimi
 uisum liberos. ut liberos unum quod in hēuac

[honestatum qui nuptiarum] coniunctione sectantur
 quam [etiam his qui] cum deinceps seruata religione
 nascetur incipiat esse consultum et honesta
 te nascendi etiam posteritas ipsa purgata sit
 id enim pietati nostrę maxime placuit ut scę 5
 necessitudinum nomina optineant aput afec
 tos suos piam hac religiosam consanguinitatis de
 bitam caritatem nefas enim credere est eaque
 in preteritum a conplurib; constat esse commissa
 cum pecodum hac ferarum promiscuo ritu ad inli 10
 cita conubia instinctum exercendę libidinis sine
 ullo respectu pudoris hac pietatis inruerint.
 sed quęcumquę antehac uel inperitiam delinquen
 tium uel p ignorantia iuris barbaricę inmanitatis
 ritum ex illicitis matrimonii si uidentur admissa 15
 quamquam essent seuerissemę uidicanda tam
 contemplationē clementię nrę ad indulgentiā
 uolumus ptinere, ita tamen ut quicumquę in
 ante actum tempus illicitis incestisque se ma
 trimoniis polluerunt hactenus adeptos se esse 20
 nrām indulgentia sciat ut post tam nefaria
 facinora uitam quidem sibi gratulentur esse con
 cessā sciant tamen non legitimos se suscepisse libe
 ros quos tam nefaria conjunctionē genuerunt
 ita enim fiet ut de futuro quoque nemo audeat 25
 inefrenatis cupiditatib; oboedire cum et sciant
 ita praecedentes admissores istius modi criminū
 ueniam liberatos. ut liberorum quod illicitae

Line.

1. *For* honestatum *read* honestati; con-
iunctione, coniunctionem.
2. cum, *M. writes* inde.
3. nascetur, *read* nascentur.
5. *scę* = sanctae, *read* sancta (*Cujas*).
- 6 and 7. affectos, *read* affectus.
7. hac = ac; consanguinitatis, *read* con-
sanguinitati.
8. eaque = ea quae.
9. preteritum = praeteritum.
10. pecodum, *read* pecudum; hac = ac.

Line.

11. instinctum exercendę, *read* instinctu
execrandae (*Schulting*).
12. hac = ac.
13. inperitiam, *read* inperitia.
15. ritum, *read* ritu; matrimonii si, *read*
matrimonii (*V W.*).
16. seuerissemę = seuerissime. uidicanda,
read uindicanda. tam = tamen.
24. coniunctionē, *read* coniunctione.
26. inefrenatis, *M. has* infrenatis.
28. *For* ueniam *read* uenia; *for* quod, quos.
illicitae, *read* illicite.

ad idem in iurisdictione...
atque romensis legibus in quibus...
domine gratia quicquid eius modis esset omnissimum
esse eorum clementia remittendum aut legibus con-
gruendum. sed & post hanc religionem scitatum quod in co-
nubus copulandis uolumus ab unoquoque seruen. ut se-
cedit disciplinae legesque romanas in omni uirtute persequi
& scitatum scitatum nuptias licet esse que sint roma-
no iure permissis cum quibus autem personis tam cognate
etorumque & ad finem numero contractu non
licet esse matrimonium hoc edicto nostro complexi
sumus cum filia neptis propter quem ceteris obiacentibus
& de ceteris amicitia hac magister aetate foras sit filia &
et neptem que ad finibus preuigilare nouerit
foculus noster ceteris queque antiquo iure exhibentur
cuius cunctos uolumus abstineri nihil enim nisi hanc
tantum habere abile nostrae iurisdictionis ad iudicium. Et tunc
cedit ut in magnitudine romensis gratia cunctis
etorum non minus seboye puenit quoniam omnes leges sunt
ligione scripta pudoris que obseruatione deuincta
quod hoc edicto nostro uolumus omnibus peractis fieri
quod peractis etorum ubi peractis amicitiam contracte
discipline uidetur indubitate cetera ceterum de ceteris
peractis que in diem aetate et tunc uisum aut scitatum
cunctis cunctis uidetur esse commissum. Si quia autem
contractum cunctis decussit ceteris que legum
post super edictum diem deprehenduntur admissa
dignis se uenire cunctis placet ut. n. h. in nullum

genuerunt successione ca[reatur quae iuxta uetusta]
 tem romanis legibus negabat[ur e]t optassemus qui
 dem negante quicquam eius modi esse commissam qđ
 esse aut clementia remittendum aut legibus corri
 gendum. sed et posthanc religionem scitatem quę in co 5
 nubiis copulandis uolumus ab unoquoque seruari, ut se
 ad disciplinā legesque romanas meminerint ptinere
 et eas tantum sciant nuptias licitas que sunt roma
 no iure pmissę cum quibus autem psonis tam cogna
 torum quam ex adfinium numero contrahi non 10
 liceat matrimonium hoc edicto nostro complexi
 sumus cum filia neptę pneptemque matre abia phabie
 et ex latere amita hac matertera sororis filia. et
 ex ea nepte itemque ex adfinibus preuigna nouerca
 socrus norus ceterisque quę antiquo iure prohibentur 15
 a quibus cunctos uolumus abstinere nihil enim nisi hanc
 tantum hac uenerabile^s nostra iura custodiunt, et ita
 ad tantum magnitudinem romanam gesta cunc
 torum non mirum fabore puenit qm̄ oms leges sua re
 ligione sapienti pudorisque obseruatione deuinxit, 20
 quare hoc edicto nro uolumus omnibus palam fieri
 quod preteritorum uenia p clementiam nram contra
 disciplinam uidetur indulta ad ea tantum delicta
 ptineat que in diem tertio KL Ianuarius tusco et
 anulioⁿ cons. uidentur esse commissam, si qua autem 25
 contra romani numinis decus scitateque legum
 post supra dictum diem deprehenduntur admissa
 digna seueritatem plectentur. nec enim nullum

Line.

1. careatur, *read* arceantur (*Puteanus*).
3. negante, *read* nec ante (V. W.).
4. esse, *read* esset.
5. post hanc, *read* post hac; scitatem = sanctitatem; quę = que.
8. eas = eas. que, *read* quae.
12. neptę, *read* without cedilla. pronepte, *read* pronepte itemque (W.). abia = auia. phabie, *read* proauia.
13. hac = ac.
14. preuigna, *read* priuigna.
15. socrus, norus, *read* socru nuru.
- 16 and 17. hanc tantum, *read* sanctum (*Puteanus*).
17. hac = ac, uenerabiles, *read* uenerabile.

Line.

18. romanam gesta, *read* romana maiestas (V. W.).
19. For non mirum, *read* numinum (*Puteanus*, cf. V. and W.). sua, *read* suas (V. W.). For fabore, fauore. qm̄-quoniam; oms = omnes.
22. After uenia, *add* quae (V.).
24. tertio, *read* tertium.
25. anulino, *read* Anullino. commissam, *read* commissa.
26. numinis, *read* nominis. scitateque = sanctitatemque.
27. deprehenduntur, *read* deprehenduntur.
28. For seueritatem, *read* seueritate; for nullum, ullam.

quicquam fecim & ubi in se con
sequi possit. quod eundem in chin & post edicam.
nisi non dubitabit in suere. Dicitur. maius d. m. asco
auscalleo noho const. l. p. de xlv

Er magonius sub titulo. Denuptis imp. diocle-
nus & maximianus ag. p. fl. claudiano his qui incestu
nuptis per rorē contrahunt. nepoenis subiciantur
tredidum clemencia principum subuenit. si postea
quod errorē suum rescierint. lycone fariar nup
tias dirimerint. p. p. id. m. y. t. & diogthe cons.
l. p. de xlv. Hanc quoque constructionē gregor
anus titulo. Denuptis inseruit que est aricesima
& secunda christi & die. id est in stratio p. p. u. t.
lun. diocletiano & c. & maximiano. augustis.

l. p. de xlvii. p. p. p. l. b. singulari. De educte
ris que roris filiam uxorem duxerat perorem an
cequam pueniretur & delectate dirimit cohitum
quero conced huc possit accusari. respondit. & qui con
luncat sororis filia bona fide abstinit pollicem se
mitti. p. c. c. m. e. f. quia qui errorem cognito distinit
cotum creditur eius uoluntatis fuisse. ut si sciss & se
lneo necessitudinis grādo positum non fuisse & alē m.
ty monium copulaturus. l. p. de xlviii.

Idem dicitur in eos qui incestus nuptias contraxerunt.
maledicti & c. m. h. sunt omnes incestus p. lege cum. do
huc iudibus populis & iuino nōto contrita is d. m. abst
pulantib. sancietur & antiquē m. maledicti p. p. n. t. s. u.
quod diuina & humana sententia. & consēcuocet. unauit
l. p. diuina sic dicit.

in ta[m nefario sce]lere quisquam extimet ueniam se con
sequi posse qui [tam] euidenti crimen et post edictum
nr̄um non dubitabit infuere. dāt KŁ, maias damasco
tusco et anolino const, Kp̄ dcxlv

Ermogenianus sub titulo de nuptis Impp̄. dioclitia 5
nus et maximianus agḡ. FŁ. flauiano his qui incestas
nuptias p̄ errore contrahunt. ne poenis subiciantur
ita demum clementia principum subuenit, si postea
quam errorem suum rescierint ilico nefarias nup
tias dirimerint. prop̄. id̄. mart̄. et diogene cons̄. 10

Kp̄ dcxlvī : hanc quoque constitutionē gregori
anus titulo. de nuptiis inseruit que est tricesima
et secunda aliis tam̄ et die. id est constitutio prop̄. v id̄
Iūn̄. dioclitiano ter et maximiano augustis
Kp̄ dcxlvīi : papianus lib̄ singulari. de adulte 15
ris que sororis filiam uxorem duxerat p̄ errorem an
tequam pueniretur a delatore dirimit cohitum
quero an adhuc possit accusari respondit, et qui con
iunctę sororis filię bona fide abstinuit poenam re
mitti. palam est quia qui errorem cognito diremit 20
cohitum creditur eius uoluntatis fuisse. ut si scisset se
in eo necessitudinis grado positum non fuisset talē ma
trimonium copulaturus : Kp̄ dcxlvīiii :

Idem dicitur in eos qui incestas nuptias contraxerunt 25
maledicti tamen sunt om̄es incestis p̄ lege cum ad
huc rudibus populis ex diuino n̄to condita isdem absti
pulantib3 sanciretur, et utique om̄s maledicti puniti sunt
quos diuina et humana sententia consona uoce damnavit
lex diuina sic dicit

Line.

1. extimet = aestimet.
2. crimen, *read* crimini,
3. infuere, *read* inruere (V. W.).
4. anolino, *read* Anullino.
5. Ermogenianus, *read* Hermogenianus.
6. agḡ = augḡ.
7. fŁ = flauio.
10. dirimerint, *read* diremerint. prop id̄
mart = proposita idibus Martiis. *After*
mart, *read* Tiberiano (V. W.). diogene,
read Dione (V. W.).
12. que = quae,

Line.

13. *After* et die *insert* et cons (V. W.).
- 13 and 14. prop V id Iun. = proposita V idus
Iunias.
16. que = qui. perorem = per errorem.
17. cohitum = coitum.
- 18 and 19. coniunctę, *read* coitu (M.).
20. errorem = errore. dirimit = diremit.
22. grado = gradu.
25. incestis, *read* incesti. lege, *read* legem.
26. noto *or* nuto, *read* nutu.
- 26 and 27. abstipulantib3 = adstipulantibus.

maledictus qui concubuerit cum uxore patris sui & dicitur omnis
 populus fiat & fiat. maledictus qui concubuerit
 cum sorore sua de peccato & dicitur omnis
 populus fiat & fiat. maledictus qui concubue-
 rit cum uxoribus suis & dicitur omnis populus fiat & fiat
 maledictus qui concubuerit cum sororibus suis & dicitur
 omnis populus fiat & fiat. maledictus qui concubuerit
 cum sorore patris sui & dicitur omnis populus fiat & fiat
 maledictus qui concubuerit cum sorore matris sui
 & dicitur omnis populus fiat & fiat. maledictus qui con-
 cubuerit cum sorore uxoris sue & dicitur omnis po-
 pulus fiat & fiat; maledictus qui dormierit cum
 uxore fratris sui & dicitur omnis populus fiat & fiat
 maledictus qui dormierit cum nomine peccati & dicitur
 omnis populus fiat & fiat. **EXPLICIT RULUS DE TOL-**
LERIS SUPER PRÆCATIONIBUS & BENEDICTIONIBUS

Item de funibus & de poena eorum. Quod si duode-
 cim tabulæ uirum nocentium forent autem si se-
 aut. tolli de funibus & dicitur fieri iubentur scire ut uiri
 consulti. quia moyses prius hoc fecerat siculatio
 inueniuntur moyses dicit. si per fodiunt nocentem
 eam in uentris fuit furem percussit eum alius &
 mortuus fuerit in non est homicida his qui per-
 cussit eum. si autem solus percussit eum reus est
 mortis percussor & ipse morietur.

hip doli. paulus libro semetipsum v.
 ad legem corinthios desiccat & bene facit.

Exod. 22. 2.

Kp̄ dcxlviii. Maledictus inquit dixit Moyses
 Qui concubuerit cum uxorem patri sui et dicit omnis
 populus fiat fiat. Maledictus qui concubuerit
 cum sorore sua de patre aut de matre et dicit
 omnis populus fiat fiat. maledictus qui concubue
 rit cum nura sua, et dicit omnis populus fiat fiat 5
 Maledictus qui concubuerit cum socrus sua, et dic
 omnis populus fiat fiat: maledictus qui concubuerit
 cum sorore patris sui. et dicit omnis populus fiat fiat
 Maledictus qui concubuerit cum sorore matris suę 10
 et dicit omnis populus fiat fiat: maledictus qui con
 cubuerit cum sorore uxoris suę et dicit omnis po
 pulus fiat fiat: maledictus qui dormierit cū
 uxore fratris sui, et dicit omnis populus fiat fiat,
 Maledictus qui dormierit cum omne pecore, et dīc 15
 omnis populus fiat fiat, , . EXPL̄ TITULO de adul
 teris stupratoribus et incestis Kp̄ dcl:

Incip̄ de furibus et de poena eorum. Quod si duode
 cim tabularum nocturnum furem autem si se
 aut tello defendere interfici iubent scitote iuris 20
 consulti. quia moyses prius hoc statuit si cui leccio
 manifestat moyses dicit. si pfodiens nocte pari
 etem inuentus fuerit furem pcusserit eum alius et
 mortuus fuerit hi non est homicida his qui percus
 serit eum. si autem sol ortus sup eum reus est 25
 morti pcussor et ipse morietur;

Kp̄ dcli: PAULUS LIBRO SENTENTIARUM V,
 ad legem corneliam de sicaris et beneficiis:

Line.

1. inquit = inquit.
2. uxorem, *read* uxore. patri, *read* patris.
3. Deut. 27, *on margin by a much later hand.*
6. nura for nuru.
7. dīc = dicit.
15. omne for omni.
16. Expl̄ = explicit, titulo, *read* titulus.
19. After furem *Blume adds* quoquomodo, diurnum.

Line.

- 19 and 20. si se aut tello, *read* si se audeat tello (*Schulting*),
21. si cui, *read* sicut (V.). leccio, *read* lectio.
22. Exod. 22. 2, *on margin by a much later hand.*
23. furem, *read* fur et.
24. hi, *read* hic (V.); his = is.
25. After ortus *add* fuerit.
26. morti, *read* mortis (W.).
28. beneficiis = ueneficis.

Si quis in praesentia aut in futuro vel diurnum cum scabulo de fin
tere occiderit haec quidem legem non teneat. sed melius
fecerit qui cum comprehensum a scabulo cum diurno id
presidentem magistratibus optulerit. l. p. de l. iii.

Ulpianus libro viii ad edictum de re iudicata

Si quis ex parte pauperem dedentem lulum occiderit. si
mentis edictum non duntaxat sufficit occisum sed postea
lulum ad se refertur. unde si quis unum lulum occiderit
occidit legemque non teneat quia non occidit
sed si quis cum lulum ferro se percutit qui occidit
non indetur lulum occisum. unde si quis in nocatur
num quibus duo & cum a te bokerum omnimodo pma
ria occiderit. aut diurnum quem exequetur pma
ria sed a te deum. si scabulo defendatur. unde si quis
exequetur occidit. unde si quis lulum. l. p. de l. iii.

Nunc haec legem non teneat lulum & si quis in nocatur occidit
non dubia animus qui lege exequetur teneatur. si autem
cum potest se defendere occidit. magis est. ut
lulum occiderit. unde occidit ergo & cum lege corne. unde
bitur lulum. autem accipere lulum oportet. non quidem
ad modum & si cum lulum actionem contumeliam quon
iam sed quod non iure fecerit hoc est contrarium. unde
si quis qui occiderit & alia. l. p. de l. iii.

Ulpianus libro octavo de offi. proconsulis.
sub titulo de iuribus. si quis ex parte remittendi
sunt diurni in cocationibus & auctoritas iudicandi & causa
cognitae pma. unde si quis ex parte remittendi
admodum non exequetur. l. p. de l. iii.

si quis furem nocturnum uel diurnum cum se telo defendere occiderit hac quidem lege non tenetur. sed melius fecerit qui eum comprehensum transmittendum ad presidem magistratib3 optulerit. Kp dclm.

ULPIANUS LIBRO VII AD EDICTUM SUB TITULO

5

si quadrupes pauperiem dederit iniuriam occisum esse merito adicitur, non enim sufficit occisum. sed oportet iniuriam. id esse factum. pinde si quis seruum latronē occiderit lege aquilia non tenetur quia non occidit, sed et quicumque alium ferro se petentem qui occiderit 10 non uidebitur iniuria occisisse. pinde si furem nocturnum quem lex duodecim tabularum omnimodo pmit tit occidere aut diurnum quem eaque lex pmittit sed ita lex demū, si se telo defendatur uideamus an legē aquilia teneatur. et Pomponius dubitat. Kp dclm. 15

NUNC hec lex non sit in usu et si quis noctu furem occiderit non dubitamus quin lege aquilia teneatur. sin autem cum posset ad phendere maluit occidere magis est. ut iniuria fecisse uideatur ergo etiam lege cornelia tenebitur iniuriam autem accipere hic nos oportet. non quem 20 admodum et circa iniuriam actionem contumeliam quamdam. sed quod non iure factum hoc est contrarius, id est si culpa quis occiderit et reliqua. Kp dclm :

ULPIANUS LIBRO OCTAVO : DE OFFICIO PCONSULIS sub titulo de furib3 Fures ad furtum remittendi

25

sunt diurni coctornique extraordinē audiendi et causa cognita puniendi dum poena eorū sciam/ operis publici temporariū modum non egrediendū , , ,

Line.

- 1 and 2. defendere, *read* defenderet.
5. on *mar. in.* l. 3 ad l. Aq. *reference to Digest ix. 23, by later hand.*
6. iniuriam, *read* iniuria.
8. iniuriam, *read* iniuria.
9. After quia *Blume supplies* iniuria.
10. quicumque, *read* quemcumque (*Digest*).
11. occisisse, *read* occidisse.
13. eaque = aeque (*Cujas*).
14. *lex omits; for* defendatur, *read* defendat; *for* legē, lege.

Line.

16. nunc, *read* num (W.).
17. After aquilia *supply* non (*Digest*).
18. Ad phendere, adprehendere.
21. iniuriam, *read* iniuriarum.
25. furtum, *read* forum (*noted in margin of MS; by later hand*).
26. coctornique, *read* nocturnique.
27. dum, *read* dum modo (*Digest*), sciam/= sciamus.
28. temporariū, *read* temporari (*Digest*).

h^op^o dcl.v. Ideo & in hoc ne quis famulus
cuius elegerunt uel fractores uel
nec quidquam percusserunt mellei poenae humiliores
honestiores uero re legatione adficiendierunt

h^op^o dcl.vi. paulus LIBER SENECTA TITULUS
TITULO. Defunbus fusti quocumque genere animam
fecinosus efficiatur fur est quis in alibi eum contrec
atque fur eum genere sunt quatuor manifesti. n^o
manifesti concepti. & oblati manifestus fur est. qui
in faciendo deprehensus. & h^ou^oat^o minas eius locum
defuratus est comprehensus est. uel ante quam ad eum
locum destinauerat peruenit. n^o manifestus fur est
fur qui in receptibido quidam comprehensus non est.
sed eum fecisse negari non potest concepti actione
atque aput quon fur eum est inuitum oblati
actione h^ou^oat^o quon fur eum est inuitum oblati
aput se inuitum fur fusti actionem h^ou^oat^o agere potest.
Culur inter est rem non perisse concepti actionem
agere potest quon concepti & inuitum oblati agere
potest polius quon concepti inuenta est.

expt^o titulus defuribus. Incipit de falso
testimonio moyses dicit

h^op^o dcl.vii. Si fecerit testes in iustis aduersus homi
nem accusandum accusans eum impietatis fecerit
duo homines quibus est inuicem contemptio a iudice
& ante sacerdoce & ante iudice: quicumque fue
rit in illis diebus cum inquisierit iudices illi
g^ont^o & in ubi fuerit testis in iustis fecerit

Deut 19 16

Kp̄ dclv. Ideo et in balneariis furibus sed si se telofures defendunt uel efractores uel ceteris miles, nec quemquam pcusserunt metalli poenas humiliores honestiores uero relegatione adficiendi erunt:

Kp̄ dclvi. PAULUS LIBER SENTENTIARUM SUB 5
TITULO, de furibus furti quocumque genere damnatus famosus efficitur fur est qui rem alienam contrecat furtorum genera sunt quattuor manifesti, nec manifesti concepti, et oblati manifestus fur est. qui in faciendo deprehensus ~ et intra terminos eius locum 10 defuratus est comprehensus est, uel antequam ad eum locum destinauerat puenerit, nec manifestatus est fur qui intra rapiendo quidem comprehensus non est, sed eum fecisse negari non potest concepti actione tenetur aput quem furtum est inuentum oblati 15 accione his tenetur qui rem furtiuam ali optulit ne aput se inueniretur furti accionem his agere potest. cuius interest rem non perisse conceptiua autem agere potest qui rem concepit et inuenit oblatę agere potest poenes quem res concepti inuenta est: 20
EXPL TITULUS DE FURIBUS. INCIPIT DE FALSO TESTIMONIO MOYSES DICIT

Kp̄ dclvii. Si steterit testes iniustus aduersus hominem accusandum accusans eum impietatis stabunt 25
duo homines quibus est inuicem contemptio ante dm̄ et ante sacerdotes, et ante iudices, quicumque fuerint in illis diebus cum inquisierint iudices diligenter, et in uentus fuerit testis iniustus testificans

Line.

1. ideo, *read* idem.
2. efractores, *read* efractores; ceteris miles, *read* ceteri his similes (*Dig.*).
3. poenas *for* poena.
5. *After* sententiarum *add* II (Index). lib. 2 Tit. 31 (*reference to Paulus*) on margin *by later hand*.
10. The mark ~ = est; *after et add* qui; *for* locum *read* loci.
11. defuratus, *M.* has unde furatus.
12. *After* locum, *read* quo. manifestatus, *read* manifestus.

Line.

13. intra rapiendum, *read* in rapiendum.
16. accione, *ci for* ti. his = is.
17. his = is.
19. oblatę, *read* oblati.
20. poenes = penes. concepti *for* concepta.
21. *exp* = explicit.
3. testes *for* testis. Deut. 19, 16 (*Biblical reference*) on margin *by later hand*.
25. contemptio, *read* contentio. dm̄ = dominum.

id est in iudicio suo feceris et sic ut uolunt
 necesse est. et delectis malum de medium uestrum
 et ceteris auditis timebunt nec uidebunt hanc meam
 feceris hanc uos: kēp dclviii: paulus liber sin
 gulam de poenis omnium legum sub titulo ad legem
 hanc de ceteris: qui falsum testimonium dixerint
 unde traditur hanc lege cornelia testimonium
 de necesse est. kēp dclviii: paulus liber sen
 atum quinto sub titulo de testibus et de questionibus
 huius falsum uel ceteris testimonium dixerunt. uel
 utriusque pariter perdidit aut in eum aguntur
 aut huiusmodi selegantur aut cuncta submouetur
 kēp dclv: Ideo libro ad legem cornelianam
 de sicariis et beneficiis lex temporaria penam depor
 tationis infligit et qui hominem occiderit eiusque
 causa peritque faciendi cum aetelo fuerit. et qui uen
 nem hominis necandi causa habuerit uendiderit
 perperuerit falsum uel testimonium dixerit quoque
 perperuerit moratissus causam presterit que omnia si
 cinox in honestiores poenae ceptis undice ppla
 eunt humiliores uero aut in eum tolluntur aut be
 tius subiciuntur: kēp dclxi: paulus liber sen
 atum v. sub titulo ad legem cornelianam testimonium
 atque huiusmodi falsum testimonium prohibendum pe
 cuniam accipere dederit ludicam usque ut sententia
 ferat uel non ferat corruerit corrumpendum
 usque curauerit humiliores cepte puniuntur honer
 atiores publicis bonis cum pso ludicam in iusalam
 deponuntur

[iniusta insurgentes aduer]sus eum facietis ei sicut uoluit
mal[e]fa[ce]r[e] et deletis malum de medium uestrum
et ceteri audientes timebunt nec audebunt hec mala
facere inter uos: K^P DCLVIII: PAULUS LIBER SIN
gulari de poenis omnium legum sub titulo ad lege iu 5
liam de adulteris qui falsum testimonium dixerint
pinde tenebitur hac si lege cornelia testamentaria
damnatus esset. K^P dclviii: PAULUS liber senten
tiarum quinto sub titulo de testibus et de questionib³
hi qui falsum uel aliqua testimonia dixerunt, uel 10
utriusue parti pdiderunt aut in exilium aguntur,
aut in insulam relegantur aut curia submouetur,
K^P DCLX: IDEM LIBRO AD LEGEM CORNELIAM
de sicariis et beneficis lex corporalia penam depor
tationis infigit ei qui hominē occiderit eiusque rei 15
causa furtique faciendi cum telo fuerit, et quie
nenum hominis necandi causa habuerit uendiderit
parauerit falsum ue testimonium dixerit quo quis
periret mortis suę causam prestiterit que omnia fa
cinora in honestiores poena capitis uindicare pla 20
cuit humiliores uero aut in crucem tolluntur aut bes
tiis subiciuntur: K^P dclxi: PAULUS LIBER SENTEN
tiarum V, sub titulo ad legem corneliam testamen
taria hii qui ob falsum testimonium phibendum pe
cuniam acciperit dederit iudicem uę ut sententiā 25
ferat uel non ferat corruerit corrumpendum
uę curauerit humiliores capte puniuntur hones
tiores publicatis bonis cum ipso iudicem in insulam
deponantur

Line.

2. deletis, *read* delebitis, medium *as* medio.
4. Liber, *read* libro.
5. lege, *read* legem.
6. dixerint, *read* dixerit.
7. hac *for* ac.
8. liber *for* libro.
9. lib. 5, tit. 15 (*reference to Paulus*) on margin by other hand.
10. falsum uel aliqua, *read* falso uel uarie (*Paulus*).
11. utriusque, *read* utrique (V. W.).
13. After libro *M. supplies* sententiarum quinto sub titulo. lib. 5, et Tit. 23 (*reference to Paulus*) on margin by later hand.

Line.

14. beneficis=ueneficis; *for* corporalia *read* cornelia (V. W.); *for* penam poenam.
15. infigit *for* infligit.
16. furtique, *read* furtiue.
19. suę, *read* ue (W.). que = quae.
20. uindicare, *read* uindicari.
22. Liber, *read* libro. Tit. 25 (*reference to Paulus*) on margin by later hand.
- 23 and 24. testamentaria, *read* testamentariam.
24. hii, *either omit or (as Huschke) read* is.
27. capte = capite.
28. iudicem, *read* iudice.
29. deponantur, *read* deportantur (*Paulus*).

h^op. dcl. xii: Idem eodem libro de p. d. suu. et
 quidquid in ueritate non est sed p. d. suu. et
 h^op. dcl. xiii: Ulpianus sub titulo de poena legis cor-
 nelie testamentum facit. & cetero consilio. quo
 poena legis cornelie inrogatur ei quidquid aliud quam
 testamentum scribit signauerit et signauerit uel curauerit.
 h^op. dcl. xiiii: Item quod p. d. s. i. s. t. e. r. a. t. i. o. n. e. s.
 faciendas testamentum uel falsum uel non dictanda.
 aut consignanda de loco uel curauerit h. e. m. o. v. & c.
 ro. consi. h^op. dcl. xvi: Item quod obstruendum ad
 uocationem testimonium uel pecuniam acceperit pactum
 uel fuerit societatem coheret. aut aliquam de la-
 n. h. i. n. t. e. p. o. s. u. e. n. t. h^op. dcl. xvi: Item si quis cohe-
 rit ad uocationem inuocationem senatus consulto quod
 coacti & messellae facit. coheretentur sed & si qui
 obstruendum uel de iudicandum non semper ad
 uel testimonium pecuniam acceperit senatus con-
 sultum quod duobus g. m. i. n. i. s. consi. factum sit poena
 legis cornelie adfiscitur. & cetera. VIII: Item mo-
 ser. falsum testimonium non debet aduersus proximu-
 rum: h^op. dcl. xvii: Ulpianus libro VIII.
 De officio p. consulis ad legem lib. um de iur. publice &
 p. ueritate eadem legem quibusdam testimonium
 omnino quibusdam interdicitur in iur. capite octo-
 gesimo & vii. & capite octogesimo octauo. In hac
 uel debet uel bis hominibus In hac lege In eadem testimo-
 nium dicere ne licet quis ab coparentem uel iur.

K $\bar{\text{P}}$ DCLXII: Idem eodem libro et $\bar{\text{T}}$ falsum est
 quidquid in ueritate non est. sed p uerum adseuerat;
 K $\bar{\text{P}}$ DCLXIII, ULPIANUS sub titulo de poena legis cor
 neliae testamentaria libro viii. preterea factum est
 senatus consultum statilio. et tauro consulibus quo 5
 poena legis cornelię inrogatur ei quidquid aliud quam
 testamētū sciens signauerit signaueri uę curauerit,
 K $\bar{\text{P}}$ DCLXIII: ITEM QUOD FALSAS TESTATIONES
 faciendas testamenta uel falsa inuicem dicenda
 aut consignanda dolo malo curauerit licinio V, et tau 10
 ro cons̄s, k $\bar{\text{p}}$ dclxv: Item qui OBSTRUENDAM ad
 uocationem testimonia uę pecunia acceperit pactus
 uę fuerit societatem cohierit. aut aliquam delatio
 nem interposuerit, K $\bar{\text{P}}$ dclxvi: Item si quis cohie
 rit ad occisionem innocentium senatus consulto quod 15
 cocta et messella factum est cohercentur. sed et si quis
 ob uenundandum uel denudandum non remittendū
 uę testimonium pecuniam acceperit senatus con
 sulto quod duobus geminis cons̄s factum sit poena
 legis cornelię adficitur. et reliqua. viii: Item moy 20
 ses. falsum testimonium non dabis aduersus pximū
 tuum: K $\bar{\text{P}}$ dclxvii: Ulpianus LIBRO viii.

De officio pconsulis ad legem iuliam de ui publica et
 priuata eadem legem quibusdam testimonium
 omnino quibusdam interdicitur inuitis capite octo 25
 gesimo et vii, et capite octogesimo octauo. In haec
 uerba his uerbis hominibus in hac lege in reū testimo
 nium dicere. ne licito qui se ab eo parentem uę eius

Line.

1. T = titulo.
2. uerum, *read* uero. adseuerat, *read* adseueratur.
3. L. 9 D. ad l. cor. de fal (reference to *Digest*) on margin by later hand.
- 3 and 4. *Instead of the whole of line 3 and 4 till libro viii, Blume has Ulpianus libro octauo [de officio proconsulis] sub titulo de poena legis corneliae testamentariae.*
6. quid quid *read* qui quid.
7. testamētū = testamentum. *After* sciens, *supply* dolo malo falsum (*Digest*). signaueri, *read* signari.
8. quod, *read* qui ad (*Digest*).
9. uel, *read* ue.
10. curauerit, *read* coierint *Digest*.
11. obstruendam, *read* ob instruendam (*Pithou*).
12. pecunia *read* pecuniam.

Line.

13. societatem, *read* societatemue; cohierit = coierit.
- 13 and 14. delationem, *M. has* de ea re pactionem; *Huschke* obligationem (from *Digest*).
- 14 and 15. cohierit = coierit.
15. occisionem, *read* accusationem (*Pithou* from *Digest*).
16. cocta = cotta. messella = Messalla.
17. *Instead of this line, read* ob denuntandum uel non denuntandum remittendum (*Cujas*).
19. sit, *read* est.
23. *After* proconsulis *supply* sub titulo.
24. legem *for* lege.
26. *Before* in haec *repeat* capite octogesimo octauo *added by* Lachmann.
27. uerbis *omit*, or with Lachmann *read* uero. In hac *omit* in.
28. licito, *read* liceto; and parentem, parente.

liberto. & si quis eorum liberatus fuerit. qui-
liberatus est. & si quis eorum in integrum restitutus non est.
qui in uinculis custodire quis publice erit. qui de
pugnandi cause accusatus erit. qui bestias
depugnare locatur. Locutus est perit. quinquagena
landi cause ad urbem missus est. et in pace usque corpore
quod sum facere fecerit. qui ob testimonium dicendum
pecuniam accepisse iudicatus est. ne quis eorum
haec legem in reum testimonium dicere capite octoge-
simos septimo his homines in reum testimonium
nec dicunt quis obnoxius est ei reopposita uere cognatione
conlunatus. qui foet. gnt. ut ncas pugnatus quebus
erit. & reliqua. **cap. de lxxviii** paulus libro sen-
tentiarum sub titulo de testibus. & quod sub
susceptor aures & uos uel me. uis. quod accusator
de domo eduxit uel uice humiliter infamauerit
interrogari non placuit testibus huius & uice qua
habet & pcedenda debet. & dignitas si sit ad pndm uel
cognacum in reum testes in interrogari non possunt
aduersus se in uicm pcedentes & liben. latineque liben
nec uolentes cedat testimonium condnata hndis sunt quia
re in uere testimonium necessitas opsonarum ple-
rumque consumpit. **Exple titulus de pccatibz**
qz testimonium non admittendo decimo.

Incipit de deposito moyses dicit.

cap. de lxxviii : Si aliquid dabit proximo suo argento
ut uisseriure & furcatum fuerit de domo hominis
si inuenerit quis furcatum est reddet & duplum. quod si

Ex d. 11. 7

liberto uę cuius eorum libertus libertauerit. quiue
 inpuer erit quiue eorum in integrum restitutus non est.
 quiue in uinculis custodiaque publica erit. quiue de
 pugnandi causa auctoratus erit. quiue bestias
 depugnare locauit. locauerit preterquam quiacu 5
 landi causa ad urbem missus est erit palā uę corpore
 questum faciet fecerit quiue ob testimonium dicendū
 pecuniam acceperit iudicatus erit. neue quis eorum
 hac legem in reum testimoniū dicat capite octoge
 simo septimo his homines inuiti in reum testimoniū 10
 nec dicunt qui sobrinus est ei reo ppiore uere cognatione
 coniunctus. quiue socer gener uitricus priuignusque eius
 erit, et reliqua: Kp̄ dclxviii, PAULUS LIBRO SEN
 tentiarum sub titulo de testib3 et questionib3
 susceptos testes et eos uel maxime quod accusator 15
 de domo eduxit uel uite humilitas infamauerit
 interrogari non placuit testibus enim et uite qua
 litas expectari debet. et dignitas si sint adfinem uel
 cognatum inuiti testes interrogari non possunt
 aduersus se in uicem parentes et liberi, itemque liberti 20
 nec uolentes ad testimonium admittendi sunt quia
 rei hi uere testimonium necessitudo psonarum ple
 rumque corrumpit: EXP̄L. TITULUS DE FAMILIA
 ris testimoniū non admittendo decimo
 INCIPIT DE DEPOSITO MOYSES DICIT. 25
 Kp̄ dclxviii: Si aliquid dabit pximo suo argentū
 aut uas seruare et furatum fuerit de domo hominis
 si inuenitur qui furatus est reddet duplum, quodsi

Line.

1. liberto uę . . . libertauerit, *read* (with *M.*) libertoue cuius eorum libertiue libertaue liberauerit.
2. inpuer, = impubes. *After* quiue, *M.* inserts iudicio publico damnatus est qui (*Digest*).
4. *Before* bestias *insert* ad (*Pithou*).
5. locauit, *read* se locauit.
- 5 and 6. quiaculandi, *read* qui iaculandi.
7. fecerit, *read* feceritue.
- 8 and 9. neue . . . dicat. *M.* changes to nec uolens . . . dicit.
9. legem, *read* lege.
10. homines *omit* (*M.*).

Line.

11. nec dicunt, *read* ne dicunto, (*Lachmann*); for uere, ue.
12. priuignusque, *read* priuignusue.
14. *After* sententiarum, *read* v.
15. susceptos, *read* suspectos, and for quod, quos.
17. testibus, *read* in testibus.
18. expectari, *read* spectari. si sint, *omit* and before ad finem *insert* in (*V.*)
20. *After* itemque, *Huschke* inserts patroni et.
22. hi uere, *omit* hi and *read* uerae.
23. testimoniū = testimonium.
26. aliquid, *read* aliquis. Exod. 22. 7 (*Biblical reference*) on margin by later hand.

non fuerit inuentus fur accedat his qui comm[en]datum
 susceperat ante dominum et iurauit nihil se nequiter
 egisse de omni re comendata p[ro]ximi sui et liberabitur.
 Kp̄ dclxx, MODESTINUS libro differentiarum
 secundo de deposito uel commendato: Comendati iu 5
 ditio conuentus est culpam prestare cogitur qui uero
 de depositi conuenitur, de dolo non etiam de culpam
 condemnandus est. comodati enim contractus quia
 utriusque contrahentis utilitas interuenit. utrumq[ue]
 prestatur in depositi uero causula deponentis utilitas 10
 uertitur tibi dolus tantum prestatur. sed in ceteris
 quoque partibus iuris ista regula custoditur. sic enim et
 in fiducię iudicio et in accionem rei uxori et dolus et culpā
 deducitur quia utriusque contrahentis utilitas inter
 uenit in mandati uero iudicio dolus non etiam tutoris 15
 utilitas in administratione uersatur depositi dam
 natus infamis est, qui uero commodati damnatur
 non fit infamis alter enim p[ro]pter dolum alter p[ro]pter
 culpam condemnatur actione deposito couentus
 ciuiarum nomine apud eundem iudicem utiliter 20
 experitur adhis cui res comendata est inproue ciua
 riarum exactionem intendit inpensas tamen necessa
 rias iure p[er]sequitur quas forte in egrum uel alias la
 borantem inpenderit. RESPONDIT DEPOSITA
 Kp̄ dLxxi. Si subripiatur dominus domui habet 25
 furti accionem quamuis apud quem res deposita est
 intersit ob inpensas in rem factas se retinere. ius
 uero cui res commodata sit furti experiri debebit

Line.

1. accedat, *read* accedet.
2. iurauit, *read* iurabit,
5. *After* secundo *supply* sub titulo. uel
 commendato, *read* et Commodato.
 Comendati *read* commodati (W.).
6. est, *read* et.
7. de depositi, *omit* de culpam, *read*
 culpa.
8. comodati, *read* commodati, *and* for
 contractus, contractu (V. W.).
10. causula *read* causa sola (V.).
11. tibi, *read* et ibi (V. W.)
13. iudicio, *read* iudicium; uxori *read*
 uxoriae; et dolus, *omit* et; for culpā
read culpa.

Line.

15. iudicio, *read* iudicium. *After* etiam
supply culpa deducitur quamuis singu
 lariter denotare liceat in tutelae iudicium
 utrumque deduci cum solius pupilli
 (V. W.).
16. uersatur. *read* uersetur.
19. deposito, *read* depositi (*Digest*).
20. ciuiarum, *read* cibariorum.
21. adhis, M. at is; for commendata *read*
 commodata; for inproue, inprobe.
- 21 *and* 22. ciuiarum = cibarium.
- L. 23. D. depos (reference to *Digest*) on
 margin by later hand.
24. Respondit deposita, *read* res deposita.
25. domui, *read* dumtaxat (*Schulting*).
26. *After* quamuis *supply* eius (V. W.).
27. se retinere, *read* rem retinere (*Edd.*).
 ius, *read* is.

in iudicio vendendo et accipiendo commodum semper in
simplici comperta depositum non nunquam in
duplum scilicet firmiter vel necesse est vel necesse est aut
tumulus occidere deponatur. k p dcl. xxi

Erastogenianus sub titulo de depositum huiusmodi in sen
constitutione. idem Augustus cesar florentis muna
tio eum qui suscepit depositum idolum non etiam
casu prestare et alius est. cum itaque pponat sig
nis singulis et eximatis de hisque tribuere comen
datis. nec ullum idolum in sub arce huius rebus adhibi
tum recorpiunt. nihil contra lurs reactionis p
pccatur. & qm nec augeteris moras adhibere
uicem & actionem negotium inter uos hortum secundum
lurs hortum suarationem deciderat k p dcl. xxi

Subscripta VIII. Iulianus et Augustus ces. VIII.
Idem Augustus & cesar p. aurelio atteneo andronico
euspne quosue fhm & cer gbit mceat rta deposuisse
pponis cepit recorpiunt conuincit in actro
gon quod siue atteneo. siue dolofecerunt cominus
possint restituere secundum bonam fidem tribuatur
facere compelle subscripta: VI. kl. april. syranico
ss cons. k p dcl. xxi. Idem Augustus & cesar
aurelio & eustatio & diosimo huius depositum
suscepit ultra idolum. sinon alius speculatur conue
nit prestare nihil necesse habet cuius in memor lurs
recorpiunt partium allegationibus, auditis pro
ceptorum qualitate & sue ordinant. si uicem
subscripta VIII. kl. nou. appiana.

Si modo soluenda actio fuerit commodati semp in
 simplum competit depositi uero nonnumquam in
 duplum scilicet si ruine uel naufragii uel incendii aut
 tumultus causa res deponatur, Kp dclxxii

Ermogenianus sub titulo de depositi huius modi inseri 5
 constitutione. idem augustus cesar flavius muna
 tio eum qui suscepit depositum dolum non etiam
 casu prestare certi iuris est. cum itaque pponas ig
 nis sui quedam cremata de hisque tibi fuere comen
 data. nec ullum dolum in subtrahendis rebus adhibi 10
 tum rector puintię nihil contra iuris rationem fieri
 patietur, et qm nectu quereris moras adhibita
 uarietatem negotium inter uos hortum secundū

Siuris hordinem sua rationem decidetur, Kp dclxxiii 15
 subscripta viii KL Iul. Serdica Augustus cesarib3

Idem augustus et cesare fl aurelio altenico andronico
 Ieus pne quos uestem et argenti materia deposuisse
 pponis aput rectorem puintię conuenit interro
 gari quod siue teneant. siue dolo fecerunt cominus
 possint restituere secundum bonam fidem tibi satis 20
 facere compellet subscripta: vi Kt april Syrmi. ce
 ss cons: Kp dclxxiiii: Idem augustus et cesa
 res aurelio et eustatio et diosimo his qui depositū
 suscepit ultra dolum. si non aliud specialiter conue
 nit prestare nihil necesse habet cuius memor iuris 25
 rector puintię partium allegationib3 auditis pro
 ereptorum qualitate sue ordinauit. sententia
 subscripta xiiii Kt nou appiaria;

Line.

1. Soluenda, *read* soluendo (*Pithou*); actio fuerit, *read* fuerit actio.
5. de depositi, *omit*, de (*B. index*), or with *Huschke* *read* deposito. inseri, *read* inserit.
6. constitutione, *read* constitutiones. Augustus cesar flavius, *read* Augg [et]. Caess. Fl. [i.e. Flavio].
8. casu, *read* casum.
9. sui, *read* ui.
12. nectu, *read* necti.
13. uarietatem, *read* uarietate: for hortum ortum.
14. rationem, *read* ratione.

Line.

15. Augustus cesarib3, *read* Augustis cons. (*Cujas*).
16. Augustus et cesare, *read* Augg. et Caess. (*B. index*).
17. eus, *read* eos: pne, *read* penes; materia, *read* materiam.
19. For quod, *read* qui eos (*Huschke*); for fecerunt, fecerint. cominus = quominus.
21. and 22. Syrmi. ce ss, *read* Sirmi Caess.
2. . For Augustus, Augg. (*Cujas*).
25. euastatio = Eustathio; his = is.
26. allegationib; = allegationibus.
27. sue, *read* sua; ordinauit = ordinabit. sententia = sententiam.

lxxv. Idem. augustinus & ceteris. lxxv.
 & quod dicitur ille quid dolo malo posito non restituit
 suo nomine conuentus ad eum cum in ipso periculo
 restitutionis urgetur sententia: decem. il. come
 dia. cor. cor. lxxvi. Paulus lxxv. senten
 tiam sub titulo secundo. de deposito deponere
 possumus apud alium id quod nostrum est uel alibi
 depositum est quasi diu posita seruandum est quod
 breue tempus custoditum deatur deponere uidetur
 qui in maiori ruina inest diu positi apud alium cur
 adie causa deponit. deponere uidetur. & inquis
 pccatum habent uel minus idoneam custodia domus
 uelum loca et non amens apud aliquem res cur
 ad id idem commodat si acellum uel exigitum
 deposuero. & his poene quem depositum fuit meli
 uito contumacetur. & depositi & furci actioni
 in eum competat obres depositi & doli actionem ppter
 actionem in ludi de depositi h& mora & fructus ue
 niunt. & usury & de depositi prestantur. si qui
 re in poene se posuerit apud alium deposuerit. tam
 ipse direptam quam hi qui apud eum deposuerit uale
 actionem de positi habere possunt. si pecuniam de
 posuero eam huncque in tibi commisit iero mutuum
 magis uidetur quam de posita hac. phoc pen
 culo avertit. si in apud te de posita uendideris
 eamque redideris post quam p dideris semel amisse
 dolo ppterpetuam de posita actionem teneberis.
 & causa de positi legimus duodecim. tabularum in du

lxxv. 12.

Kp̄ dclxxv: Idem Augustus et cesares vii
et quadrat ille qui dolo malo posito non restituit
suo nomine conuentus ad eius cum infameꝯ periculo
restitutionem urgetur scripta id. decem. ii. come
dia ccs cons. Kp̄ dclxxvi: PAULUS LIB. SENTEN 5
tiarum sub titulo secundo de deposito deponere
possumus aput alium id quod nostri iuris est uel alieni
depositum est quasi diupositum seruandum est quod
breue tempus custodiendum datur deponere uidetur
qui in metu ruineꝯ incendii naufragii aput alium cus 10
todie causa deponit. deponere uidetur, et his qui sus
pectam habent uel minus idoneam custodiā domus
uel uim latronum timens aput aliquem res cus
todiendam commodat. si sacellum uel argentum
deposuero. et his poeneꝯ quem depositum fuit me in 15
uito contrectauit. et depositi et furti actio mihi
in eum conpetit ob res depositas dolus tantum pres
tari solet in iudicio depositi hec mora et fructus ue
niunt, et usure reideposite prestantur. si quis
rem poeneꝯ se posita aput alium deposuerit. tam 20
ipse direptam, quam his qui aput eum deposuit utilē
actionem depositi habere possunt, si pecuniam de
posuero eam hanc quem tibi cōmissero mutuam
magis uidetur quam depositam hac, p hoc peri
culo tuo erit, si rem aput te deposita uendideris 25
eamque redimeris post quam pdideris semel amisso
dolo perpetuam depositi actionem teneberis,
et causa depositi legem duodecim tabularum indu

Line.

1. Augustus et cesares, *read* Augg. et caess.
- 1 and 2. uii et quadrat ille, *read* septimiae
Quadratillae (V. W.).
2. posito, *read* depositum.
3. infameꝯ = infamiae.
4. restitutionem, *read* after eius in line 3.
scripta id. decem, *read* subscripta prid.
idus decembres (W.).
- 4 and 5. II comedia, M. has Nicomedia.
5. ccs, *read* C.C.
6. secundo, *read* after libro in previous
line.
9. Before breue *supply* ad.
- 10 and 11. custodie = custodiae.
11. his = is.
12. habent, *read* habens (V. W.).
13. res, *read* rem.
14. Lib. 2, Tit. 12 (reference to Paulus) on
margin by later hand.

Line.

14. commodat, *read* commendat; sacellum
as sacculum (*Digest*); after argentum
supply signatum (Paulus).
15. his = is. poeneꝯ = penes.
18. hec, *read* ex (V. W.).
19. usure = usurae. deposite = depositae.
20. poeneꝯ = penes; posita, *read* depositam.
21. direptam, *read* directam. his = is.
23. eam hanc.....cōmissero. M. *reads*
eamque...permisero, Blume eaque uti
tibi permisero.
24. depositam, *read* deposita. hac = ac.
25. deposita, *read* depositam.
26. redimeris, *read* redemeris. post quam,
M. omits quam; amisso, *read* admisso.
27. perpetuam.....actionem, *read* perpetua
.....actione (W.).
28. et, *read* ex, and legem, lege.

plum actio datur edictum pretoris in simplum :
 Kp̄ dclxxvii: GREGORIANUS LIBRO III. sub ti
 tulo de deposito Imp̄ alexander. ā mestrio militi
 incursu latronum ornamenta deposita apud
 inter prefectum ab eis perierunt detrimentū 5
 ad heredes eius qui depositum accepit, qui dolum
 tantum prestare debunt non ptinet, quod si ex
 pretexto latrocinii commissi resque in potesta
 te heredi sunt non restituntur. tam depositi quā
 exhibendū actio. sed in rem uindicatio competit, 10
 prop. vii d̄ Kt̄ iut̄ maximiano bis et urbano. CC
 Kp̄ dclxxviii: PAULUS LIBER RESPONSOR v,
 sub titulo ex locato et conducto imp̄. antoninus
 Iulio agripino dominus horreorum periculum sui
 maioris uel efracture latronum prestare non 15
 cogitur his cessantib; si quid expositis rebus inlesis
 extrinsecus horrei damnum depositorum sarciri
 debet. prop. IIII NON NOU. antonino. III consl̄
 Kp̄ dclxxviii: PAULUS R̄ SATIS PREPOSITA
 constitutionem declarare his qui horrea locant 20
 maiorem uim inputari non posse: EXPE TITULO
 de deposito unde: Kp̄ DCLXXX, INCIP. DE ABE
 geatoribus moyses dicit, Si quis inuolauerit
 uitulum aut ouem et occiderit aut uindederit
 quinque uitulus restituere pro uitulum unum 25
 quattuor oues p̄ oue una quod si non habet unde
 reddat uenundetur p̄ furto. Kp̄ dclxxxi.

PAULUS LIBER SENTENTiarUM SUB TITULO

- | | |
|--|---|
| Line. | Line. |
| 1. edictum, <i>read</i> edicto. | 16. expositis, <i>read</i> depositis (<i>Just.</i>). |
| 5. inter prefectum, <i>read</i> interfectum (V., W.). | 17. horrei, <i>read</i> horreis perit (V., W.). |
| 7 and 8. ex pretexto, <i>omit</i> ex and <i>read</i> praetextu (<i>Just.</i>). | 18. III <i>should be</i> IIII. |
| 9. heredi, <i>read</i> heredis (W.). | 22 and 23. abegeatoribus, <i>read</i> abactoribus, <i>Huschke retains</i> abigeatoribus. |
| 10. exhibendū, <i>read</i> ad exhibendum (<i>Just.</i>); <i>before in rem, insert et.</i> | 25. For uitulus <i>read</i> uitulos: for restituere, restituatur (V., W.) or restituet (<i>M. after</i> <i>ἀνορίσσει</i> Sept.). |
| 11. d = die, <i>omit</i> ; for Maximiano, <i>read</i> Maximo. CC = cons. | 28. Liber, <i>read</i> libro; <i>after</i> sententiarum <i>add</i> quinto. |
| 14. agripino = Agrippino; sui, <i>read</i> uis. | |

de abigeis et onibus atroces pecuniarum abducentes plerumque
 ad gladium uel in metallum in perpetuum quare sunt in opus
 publicum dantur. atroces autem sunt quique uos & gregi-
 ouum de stabulo uel de pascuis habigunt uel si desuper
 aut a feno conducere manu faciunt. **l. p. de l. xxxii**
Idem paulus eodem libro & titulo ab egeccatore sunt
 qui unum equum uel diuitem equum ad artem que boues uel a-
 pras decem porcos quinque. abegeunt quidquid uero in
 arce hunc numero fuerit ablatum inponat fur et pro
 quadruplo eius aut in duplum aut in triplum conueni-
 tur. aut fustibus cesus in opus publicum unius annida-
 tur. aut sub pena uinculorum domino restitueatur.
l. p. de l. xxxiii. Idem paulus eodem libro et titulo
 si opecora de quibus quis haec tenuerit. abegeat ad fo-
 rum semita tendit ad que loca coniungatur in duplo
 uel in triplum suis more damnatur. **l. p. de l. xxxiiii**
Idem paulus eodem libro et titulo. Quiboue
 uel equum errantem quod uel aliud pecus abduxerit fu-
 rem magis sum quam abegeccator fin constitui placuit
l. p. de l. xxxv. Paulus libro singul. de poenis
 pæstorum sub titulo de abigeis dicit. cum diuitem
 abigei damnantur. & ad gladium atrocedantur itaque
 diuitem prius ad concilium beatice & ipsi quæ pecora de quibus
 haec abigei abegeat ad forum premittendum est. & si uictus
 fuerit in duplum uel quadruplum condemnandus.
l. p. de l. xxxvi. Ulpianus libro octauo de offi-
 cio consulis sub titulo de abigeis. Abigeis pumandis tra-
 diuit ad notum rescriptum concilio beatice. abigei cum di-

de abgeatoribus atroces pecorum abactores plerūq:
ad gladium uel in metallum nonnumquam autem in opus
publicum dantur atroces autem sunt qui equos et greges
ouium de stabulo uel de pascuis habigunt uel si id sepius
aut a ferro conducta manu faciunt, Kp̄ dclxxxii

5

Idem paulus eodem libro et titulo, abegeatores sunt
qui unum equū uel duas equas totidemque boues uel ca
pras decem porcus quinque, abegerint quidquid uero in
tra hunc numero fuerit ablatum inponat furti pro
qualitate eius aut in duplum aut in triplum conueni
tur aut fustibus cesus in opus publicum unius anni da
tur, aut sub paena uinculorum domino restituetur.

10

Kp̄ dclxxxiii; IDEM PAULUS EODEM LIBRO ET TITULO

Si ea pecora de quibus quis litigauerat. abegerit ad fo
rum remittendus est adque ita coniunctus in duplū
uel in triplum furis more damnatur: Kp̄ dclxxxiiii

15

IDEM PAULUS EODEM LIBRO ET TITULO; Qui bouē
uel equum errantem quodue aliud pecus abduxerit fu
rem magis eum quam abegeatorem constitui placuit
Kp̄ dclxxxv, PAULUS LIBRO SINGULARI DE POENIS

20

paganorum sub titulo de abigeis dixit. cum durius
abigei damnantur, et ad gladium tradantur itaque
diuus pius ad concilium beticę et ipsi qui pecora de quibus
litigabat abegit ad forum premittendus est, et si uictus
fuerit in duplum uel quadruplum condemnandis,

25

Kp̄ dclxxxvi. ULPIANUS LIBRO OCTAUO DE OFFICIO
pconsulis sub titulo de abigeis abigeis puniendis. ita
diuus adrianus rescripsit concilio beticę abigei cum du

Line.

1. abgeatoribus; i omitted before g.
4. habigunt = abigunt.
5. a ferro. *Huschke reads* ferro aut.
7. *After* boues *add* oues.
9. *For* numero *read* numerum; *and for* inponat, in poena.
12. paena = poena.

Line.

15. adque = atque. coniunctus, *read* conuictus (*V., W.*)
23. beticę = Baeticae.
24. *For* furum *read* forum; *for* premittendus, remittendus.
25. Condemnandis, *read* condemnandus.
27. *Before the second* abigeis *insert* de.

.....
 rissime puniuntur ad gladium damnari solent, puni
 untur autem durissime non ubique, sed ubi frequentius est
 hoc genus maleficii alioquin et in opus, et nonnumquam
 temporarium damnantur, ideoque puto apud uos quoque
 sufficere genus poenę quod maximo huic maleficio in 5
 rogari solet ut ad gladium abigei dentur. aut si quis
 tam notus et tam grauis in abigendo fuit. ut prius ex
 hoc crimine aliqua poena affectus sit hunc in metallū
 dari oportere rescriptū diui adriani sic loquitur. quasi
 grauior poena sit metalli nisi forte hoc sensit diuus 10
 adrianus gladii poena dicendo ludi damnationem est autē
 differentiam inter eos qui ad gladiū et eos qui ad ludum
 damnantur. nam ad gladium damnati confestim con
 sumuntur uel certe intra annum debet consummi. hoc
 enim damnatis continetur enimvero qui in ludum dam 15
 nantur non utique consumuntur. sed etiam pilleari et
 rudem accipere possunt post inter palam si quidem post
 quinquennium pilleari post triennium autem rudem
 induere eis pmittitur: K̄P̄ DCLXXXVII: EODEM RE
 scripto diui adriani diligentissime expressum est non ubique; 20
 parem esse poenā abigeorum. K̄P̄ dclxxxviii'

Item ulpianus libro et titulo quis. abigei autem proprię
 hii habentur qui pecora ex pastu et ex fermentis subtra
 hunt, et quodadmodo deprędantur et abigei studiū
 quasi artem exercentes quas degere uel boues de armentis 25
 abducentes ceterum si quis bouem aberrantem uel equū
 in solitudinē abduxerit non est abigeus, sed fur po
 tius, sed et qui porcum uel capram uel berbicem adducunt

Line.

2. frequentius *should be* frequentius.
 5. maximo, *read* maximum (P. Faber).
 11. poena, *read* poenam.
 12. differentiam, *read* differentia.
 14. debet, *read* debent; consummi, *super-*
fluus m.
 15. damnatis, *read* mandatis (Pithou).
 17. inter palam, interuallum (Lachmann).
 20. diligentissime = diligentissime.

Line.

22. Item, *M. has* idem; quis. = qui supra.
 23. hii, *M. has* hi; fermentis, *read* armentis
 (V., W.).
 24. quodadmodo, *read* quodam modo (W.).
 25. exercentes quas degere, *read* exercent
 equos de gregibus (Dig.). armentis =
 armentis.
 27. solitudinē = solitudine.
 28. berbicem, *read* uerbecem (M.); uerue-
 cem (Dig.).

non tam grauiter ut his qui ad maiora animalia abigent
 plecti debent quamquam autem adrianus metalli poena
 item operib³ uel etiam gladii presto erit adtamen qui ho
 nestiori loco nati sunt non debent ad hac poena ptinere
 sed aut relegandi erunt aut remouendi ordinem romę 5
 tamen etiam bestiis subici abigeos uideamus et sanę
 qui cum gladio abigunt non iniqui hac poena adficiuntur
 EXPŁ DE ABIGEIS: KĀ DCLXXXVIII: DE INCEN
 diariis XII Moyses dicit, si exiuit ignis et inuenerit
 spinas et conprehenderit areas uel spicas aut campū 10
 existimationē restituet ille qui succendit ignem³
 KĀ dcxc. Paulus liber sententiarum sub titulo de
 incendiariis qui casa aut pillā inimititiarum gratiā
 incenderunt humiliores in metallo aut in opus publicū
 damnantur honestiores in insula relegantur fortuita 15
 incendia que casu uenti fuerint his uel incuriam ignem
 supponentis ad usque uicini agrus euadunt. et si ex eo
 seges uel uinea uel oliua uel fructifere arbores con
 crementur datū dānum extimatioñ sartiatur,
 KĀ dcxcī. IDEM PAULUS EODEM LIBRO ET TITUL 20
 commissum uero seruorum. si dñō uideatur noxę
 et editione sarcitur messium sanę perdum incensores
 uinearum holiuarum uę aut in metallum humiliores
 damnantur aut honestiores in insulā relegantur.
 KĀ DCXCII. IDEM PAULUS LIBRO ET TITULO 25
 Qui supra Incendiarii quidquid in oppido predandi cau
 sa faciunt facile capite puniuntur
 KĀ DCXCIII. ULPIANUS LIBRO OCTAUO; DE OF

Line.

1. his, *read* hi; ad maiora, *omit* ad; abi-
gent, *read* abigunt.
2. poena, *read* poenam.
3. item operib³. *Huschke supplies after*
item, temporarii, *and reads* operis;
M., *however, emends the two words*
to temporari. presto erit, *read* prae-
stituerit, (*Digest*) *and cf.* V., prestiterit.
adtamen = attamen.
- 3 and 4. honestiori, *read* honestiore.
4. hac poena, *read* hanc poenam.
5. ordinem, *read* ordine.
6. uideamus, *read* uidemus. sanę = sane.
7. iniqui, *read* inique (V., W.).
9. XII. *Reference is to Title.* exiuit, *read*
exierit (V., W.).
11. existimationē, *read* aestimationem (W.).
12. liber, *for* libro; *after* sententiarum *add*
quinto.

Line.

13. casa, *read* casam. pillā, *read* uillam
inimititiarum, *the frequent ti for ci.*
14. metallo, *read* metallum.
15. insula, *read* insulam.
16. que = quae. fuerint his, *read* furentis
(V., W.), *and for* incuriam, incuria.
17. agrus, *read* agros; et si, *omit* et
(*Paulus*).
18. oliua, *read* oliuae (*Paulus*). fructifere =
fructiferae.
19. extimatio = aestimatione; sartiatur
ti for ci.
22. *For* et editione, *read* deditione; *for*
sanę, sane, *and for* perdum *read* per
dolum (*Paul. Vesontius*).
26. quidquid, M. *has* qui quid, *but better*
Huschke's reading, incendia (*for*
incendiarii) si qui.

ficio [proconsulis de nau]fragiis et incendiariis lex quidem cornelia aq[ua] et igni interdicat iussit sed uarię sunt pñtionum, nam qui data opera in ciuitate incendium fecerunt si in humillimo loco sunt bestiis subici solent. si in aliquo grado et romę id fecerunt capite puniri aut certe adficiendi sunt qui hec committunt. sed et qui non data opera incendium fecerint plerumque ignoscitur, nisi in lata et incauta negligentia uel lasciuia fuit.

Kp̄ DCXCIII. PAULUS LIBRO SINGULARI. de poenis paganoꝝ sub titulo de abigeis dicit incendiarii qui in oppido prede causa id admiserint. capite puniatur qui casu insulā aut uillā non inimicitia incenderint leuius fortuita enim incendia ad forum remitenda sunt ut damnum uicini sarciatur; Kp̄ dcxcv.

ULPIANUS libro ad edictum sub titulo. si fatebitur iniuriam occisam esse in simplum, et cum doceret ite si insula meā adusueris uel incenderis aquiliae accione habebō. Kp̄ dcxcvi. Item quę est et si arbustum meum uel uillam meā quod si dolo quis insula exuserit etiam capitis poenā plectitur quasi incendiarius: Kp̄ dcxcvii: Item Si quis insulam uoluerit exurere et ignis etiam ad uicini insulam puenerit aquilia te nebitur lege uicini etiam non minus inquilinis ob res eorum exustas et ita Labeo libro xv. responsorum refert. sed si stipulā in agro tuo incenderit ignisque euagatus ad pelium uicini puenerit et illud exuserit aquiliae lex locum habeat an in factum actio sit fuit questio. sed plerisque aquilia lex locum habere n̄ uidetur. Kp̄ dcxcviii. ET ita celsus libro xxxvii digestorum scribit, id enim si stipulam incendit ignis

Line.

1. After proconsulis *insert* sub titulo.
2. interdicat, *dots above and below the last letter to indicate that it ought to be omitted.*
2. uarię *read* re uarie (W.).
- 2 and 3. pñtionum, *read* puniti.
5. grado, *read* gradu; and for puniri, puniuntur.
6. *Blume supplies before* adficiendi, deportationis poena (cf. Digest in insulam deportantur); M. leaves hiatus. et, *read* eis (M.).
12. inimicitia, *read* ex inimiciis (V., W.)
13. remitenda, *read* wanting.
14. uicini, *read* uicinis (W.)
15. After libro *insert* XVIII (B. index and W.).

Line.

16. For iniuriam, *read* iniuria; for occisam, occisum (V.). for doceret, diceret (M.). condiceret (Huschke). ite, it- *might also read* tib.
17. For insula, *read* insulam; adusueris = adusseris.; accione *read* actionem.
18. Itemque *read* Idemque.
19. insula, *read* insulam. exuserit, *read* wanting.
20. poenā, *read* poena.
23. uicini, *read* uicino.
25. incenderit, *read* incenderis (V.).
26. pelium, *read* praedium. exuserit, *read* exusserit.
27. aquiliae, *read* Aquilia.
28. n = non.
30. id, *read* ait (W.).

fugit aquilia lege eum non teneri [sed in factum agendū]
 quia principaliter hic exusit sed dum aliud legit sic
 ignis precessit cuius sententia sit rescriptū diui se
 ueri conp̄bata est in haec uerba p̄fiteri p̄pter ignem
 babuli gratia factus culpa seruorum uecturię asti 5
 lię euacatus agrum tuum ut p̄ponis depopulatus ~
 ad exemplum legis aquiliae noxali iudicio acturas
 si litis estimatio p̄mittitur iudicium cum adire
 potest uidelicet non est uisu, aquilia sufficere si
 forte seruus quę idem conductores coloni ad forna 10
 cem obdormissent. et uilla fuerit exusta muneris scri
 bit ex loca conuentu prestare debere si negligens in le
 gendis ministeriis fuit tenetur ceterorum. si alius
 ignem subierit fornaci alius negligenter custodierit
 tenetur. namque qui non custodit si nihil hic fecit 15
 quę rectę ignem subiecit non peccauit quem ad mo
 dum si hominē medicus rectę secuerit sed negle
 genter uel ipse uel alius curauerit aquilia cessat.
 quid ergo est et hic puto ad exemplum aquilię dan
 dam actionem tamen eum qui fornacem obordimi 20
 uit uel negligenter curauit. siue homo periit
 siue debilitatus est ne quisquam dixerit in eo qui ob
 dormiuit rem eum humanam et naturalem passū
 cum deberet uel ignem extinguere uel ita munire
 ut non euacaret: Kp̄ dcxcviii. Item libro vi 25
 ex uiuiano relegatum est si fornum secundum pari
 etem communem haberes an damni iniuria teneris
 et agit non posset. id, aquilia lege quia nec cum eo
 qui focum haberet. ideo equium putat in factū
 actionem dandā. sed non p̄ponit exustū parietem 30

Line.

1. fugit, *read* effugit (*M.*).
2. *After* quia *add* non (*V., W.*); exusit =
exussit; *for* legit *read* egit.
3. precessit, *read* processit; *for* sit
rescriptū *read* et rescripto.
4. p̄fiteri, *Pithou* has profiteri.
5. babuli, *read* pabuli *and before it supply*
qui (*Scaliger*). uecturię = ueturiae.
6. euacatus = euagatus; ~ = est.
7. acturas, *M.* actura.
8. cum adire, *M.* *reads* consistere, *and*
suggests as alternative iudicem tum
adire potes.
9. uidelicet = uidelicet; uisu, *read* uisa.
11. obdormissent, *read* obdormisset; mune-
ris, *read* Neratius (*Dig.*).
12. loca, *read* locato (*cf. V., W.*); conuentu,
read conuentum.

Line.

13. tenetur, *omit* (*V., W.*); ceterorum, *read*
ceterum (*Dig.*).
14. subierit, *read* subiecerit (*V., W.*).
15. *Before* tenetur *supply* an; si nihil hic,
omit si *and* hic.
16. quę, *read* qui; rectę, *read* recte.
17. rectę *read* recte.
20. tamen, *read* tam in; *before* fornacem
insert ad.
- 20 *and* 21. obordimiuit, *read* obdormiuit.
21. *After* uel *supply* negligenter custodit
quam in medicum qui (*V., W.*).
22. ne, *read* nec (*W.*).
23. euacaret, *read* euagaretur.
26. uiuiano, *some retain*; *M. reads* Vibiano.
27. communem = communem.
28. agit non posset, id, *read* et ait [*Proculus*]
agi non posse.
29. ideo, *read* et ideo (*V., W.*); equium,
read aequius (*Dig.*).

440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 979. 980. 981. 982. 983. 984. 985. 986. 987. 988. 989. 990. 991. 992. 993. 994. 995. 996. 997. 998. 999. 1000.

sane en[im queri] potest nondum mihi damnum dederit
 et [ita ignem habeat] ut motuam ne mihi de te equū sit
 me inter actionem: K^P DCC. IDEM IN FACTUM im
 perare fortassis enim de hoc senserit pculus. nisi quis
 dixerit damni non facti sufficere cautionem. sed et si 5
 quis serui inquilini insulam exuserit lib. x. urseius re
 fert sauinum respondisse lege aquilia seruorum no
 mine dominū nox ab iudicio conueniendum ex tolcato
 autem dominū teneri negat proculus autem R
 cum coloni serui uillam exuserit colonum uel ex locato 10
 lege aquilia ita ut colonus seruus posset noxę dederit
 et si uno iudicio res esset iudicata altero amplius non
 agendō. K^P DCCI. ITEM celsus libro xxvii digestorū
 scribit. si cum apes meę ad tuas aduolassent totas
 exuserit quosdam negare competere legis aquilię 15
 actionem inter quos et pculum quasi apes domini mei
 non fuerint. sed id falsum esse celsus ait. cum apes eueni
 re soleant et fructui missi sunt. sed pculus eo mouetur
 quod nec mansuete. nec ita clausę fuerint hđ: ipse autē
 celsus ait, nihil inter has et columbas interesse quae si 20
 manu refugiant domi tamen fugiunt? EXPŁ TITULO
 DE INCENDIARIIS. INCIP DE TERMINIA MOTA XIII. K^P
 MOYSES DICIT. Non transmouebis terminos pro DCCII
 ximi tui quos constituerunt patres tui uel principes
 possessionis tuę? K^P DCIII. PAULUS LIBER SEN 25
 tentiarum sub titulo finium regundorum in eum
 qui uim terminus deiecit uel amouit extra hordine
 anima aduertitur: K^P DCCIII. ULPIANUS LIB VIII
 de officio pconsulis sub titulo de terminio moto eos qui
 terminus mouerunt non in pue id facere debere 30

Line.

1. queri = quaeri; before nondum supply si. For dederit read dederis (V., W.).
2. For habeat read habeas (V., W.); for motuam, metuam (V., W.); for de te, detur (Huschke; M. des); and before equū insert an.
3. inter, read interim (Pithou); and for Idem, id est.
- 3 and 4. imperare, read inpetrare (V., W., B. index).
6. quis, read qui; exuserit, read exuserint.
7. sauinum, read sabinum.
8. nox ab, read noxali (V. cf. noxiale W.); and for tolcato, locato.
9. R = respondit.
10. exuserit = exuserint.
11. Before lege supply uel, and before ita supply teneri; seruus, read seruos; for dederit, dedere.

Line.

13. agendō, read agendū.
14. totas, read tu eas (Digest).
15. exuserit, read exuseris.
- 17 and 18. euenire, read reuenire.
18. missi, read mihi (V., W.).
19. mansuete = mansuetae, cedilla wanting. hđ = hic deest.
21. manu, read manum.
23. Deut. 19: 14, Biblical reference on margin by later hand.
25. liber read libro.
- 25 and 26. After sententiarum supply primo.
27. Before uim insert per (Paulus); terminus, read terminos; hordine, read ordinem.
28. VIII, read VIII (octavo).
29. terminio for termino.
30. terminus, read terminos.

Paulus Hadrianus rector gentis
evulget. de octembarum semco. et occupat

quos respice poemum ubi unflant verba rescripta
ita sed habet pessimum facit eorum qui est minor pi
nium causam positor abstulerunt dubitanti non potest
poene eum adus de condonatione prout a morte facien
tis magistratu poenam si splendidiore sunt prout que
conuincuntur condubito quino occupandorum. d. h. m.
finum causa id admiserunt & possunt tempus ut eum
que compariatur. et in v. l. g. m. & sic in b. m. m. a. u.
c. m. m. m. ad opus publicum d. u. quod si pignora uide
aut fortuitu lapides uisus causam. ut sunt sufficiens
us. benbur quo hercen: Expt. titulus de cetero p. a.
h. p. d. c. c. v. Incip. de placu. a. m. s. m. m. s. d. i. e. n.
Quicumque pleb. uient quemquam israhel. & uindede
rit eum mor. c. m. m. m. m. m. h. p. d. c. c. v. i. i.

Exal. 21. 16
Deut. 24. 7.

Paulus lib. sententiarum v. sub capitulo ad legem fabiani
legis fabi. ut tenetur quicquid id. m. u. m. m. m. m. m. m. m.
b. s. q. u. m. s. e. r. u. u. m. u. g. a. l. q. u. m. c. e. l. e. u. e. n. t. u. s. i. d. i. d. e. r. u.
u. i. n. x. e. n. t. c. o. m. p. a. r. u. e. r. t. & o. l. i. m. q. u. i. d. a. m. h. u. i. u. l. e. g. i. s. p. o. e.
n. e. s. u. m. m. e. c. e. p. a. r. t. s. e. d. a. r. a. n. l. a. t. a. e. s. t. c. o. g. n. i. t. i. o. i. n. p. r. e. s. e. c. t. o.
u. r. b. i. s. h. p. d. c. c. v. i. i. I. t. e. m. q. u. e. p. r. e. s. i. d. i. s. p. r. o. u. i. n.
a. t. e. & a. r. e. c. o. r. d. i. n. i. s. m. e. s. u. i. t. a. m. i. n. a. d. u. e. r. s. i. o. n. i. s. i. d. e. o.
q. u. e. h. u. m. i. l. i. o. r. e. s. u. t. i. n. m. e. c. e. l. l. u. m. d. a. m. n. i. s. t. u. r. a. u. t. i. n. e. r. u.
c. a. n. t. a. l. l. u. n. t. u. r. h. o. n. e. s. t. i. o. r. i. s. m. a. d. i. m. p. t. a. d. i. m. i. d. i. a. m. p. a. r.
a. m. b. o. n. o. r. u. m. i. m. p. p. r. e. l. e. g. a. n. t. u. r. h. p. d. c. c. v. i. i. i.

Si seruus sciens dno aliquid seruum subtrahent.
u. d. i. d. i. d. i. t. c. e. l. e. u. e. n. t. a. n. i. p. s. u. m. d. n. i. m. a. n. i. m. a. d. u. e. r. t. a.
t. u. r. q. u. o. d. s. i. u. d. n. o. i. g. n. o. r. a. n. t. e. c. a. m. m. i. s. e. n. t. i. n. m. e. c. e. l. l. u.
d. e. c. t. u. r. h. p. d. c. c. x. u. l. p. i. a. n. u. s. l. i. b. r. o. v. i. i. i.

no

KP DCCV. DIUVS HADRIANVS TERENTIO GENTIA
xvii KĒR. Septembriarum se iii co[ns]† Rescriptit

Quo rescripto poenam uariam statuit uerba rescripta
ita. sed habent pessimū factum eorum qui terminos fi
nium causam positos abstulerunt dubitari non potest
poenę eam modus ex conditione psonę et mente facien
tis magistratui poenam si splendoriores sunt psonae quę
conuincuntur condubito quin occupandorum aliorum
finium causa id admiserint, et possunt tempus ut cuius
que cum patitur ętas relegari. et sic in biennium aut
triennium ad opus publicum dari. quod si p ignorantia
aut fortuitu lapides uisus causa furati sunt sufficit eos
uerberibus quohcereri: EXPĒ TITVLVS DE TERMINEA
KĒ DCCVI: INCIP DE PLAGIARIIS XIII MOYSES DICIT ^{nota}
Quicumque plagiauerit quemquam israhel. et uindede
rit eum morte moriatur. KĒ dccvii:

PAVLVS liber sententiarum V. sub titulo ad legem fabiam
lege fabia tenetur qui ciuem idmanum ingenuus li
bertinum seruū uę alienum celauerit. uendiderit
uinxerit comparauerit. et olim quidem huius legis poe
na summaria fuit. sed tranlata est cognitio in prefecto
urbis; KĒ DCCVIII; ITEMQUE PRESIDIS PROVIN
tię extraordinem meruit ani inaduersionem, ideo
que humiliores ut in metallum damnentur aut in cru
cem tolluntur honestiorem adempta dimidiam par
tem bonorum Imp̄p relegantur, KĒ dccviii,
Si seruus sciente dñō alienum seruū subtraxerit,
uendiderit celauerit an ipsum dñm animaduerti
tur, quod si id dñō ignorante commiserit in metallū
datur. KĒ DCCX, ULPIANVS LIBRO VIII

30

Line. no

1. Gentia = Gentiano.
2. KLĒ = Kalendarum. Septembriarum,
read Septembrium.
3. rescripta, *read* rescripti.
4. sed, *read* se (V., W.).
5. causam, *read* causa (V.).
6. eam, *read* tamen (Dig.).
7. magistratui poenam, *read* magis statui
potest nam (Digest).
8. condubito, *read* non dubito (V., W.).
9. tempus, *read* in tempus (V., W.).
10. Omit cum before patitur, and after
relegari, supply id est si iuuenior in
longius, si senior recisus: si uero alii
negotium gesserunt et ministerio functi
sunt, castigari (Dig.).
12. fortuitu, *read* fortuito. uisus = usus
(Pithou)
13. quohcereri, *read* coerceri; termineamota
read termino amoto.

Line.

- 15 and 16. uindederit = uendiderit.
17. liber = libro.
18. idmanum, *read* Romanum (W.), and
for ingenuus, ingenuum.
- 18 and 19. libertinum, *read* libertinumue.
21. summaria, *read* nummaria (Cujas).
tranlata = translata; prefecto, *read*
prefectum.
22. presidis, *read* praesidis.
23. ani inaduersionem, for animaduersionem.
24. ut, *read* aut (V., W.); damnentur, *read*
dantur (V., W.).
25. honestiorem, *read* honestiores (V., W.).
dimidiam = dimidia.
- 25 and 26. partem = parte. Imp̄p = in
perpetuum (V., W.).
27. dñō = domino.
28. an, *read* in (V., W.).

Lines 15 and 16. Exod. 21: 16; Deut. 24: 7, on the margin by later hand.

sub titu[lo] d[e o]fficio pconsule ad legem fabiam frequens
 est etiam legi[s f]abię cognitio in tribunalibus presidum
 quamquam quidam pcuratores cesari usurpauerint
 quam romę tam in puintiis, sed enim iam eo puentum est
 constitutionibus ut romę quidem prefectus urbis 5
 solus superare cognoscat, si intra miliarium centesimū
 sit inuia commissa enimvero si ultra centesimum pre
 fectorum pretorio erit cognitio in puintiam enim presidū
 puintiarum, nec aliter pcuratori cesaris hęc cognitio
 iniunguntur quam presidis partibus in puintia funga 10
 tur plenę post sententiam de fabia latam pcurato
 ris parte succedunt huius certę adtamen pcuratori qui
 illam puintiā regit licet de capitalibus causis cognoscere
 nec soleat tamen ut de lege fabiam possit cognoscere.
 KP DCCXI IMP ANTONINUS CONSTITUIT 15
 Idem legis iulię de alteris coercendis constitutione im
 peratoris antonini questionē accipit lege autem fa
 bia tenetur qui ciuem romanum eundemque qui in ita
 lia liberatus sit celauerit uinxerit uinctumque habuerit
 uindiderit emerit quie in ęam rem socius fuerit cui 20
 capite primo eiusdem legis poenam iniungitur. si seruus
 qui sciente dno fecerit dns eius. sextertiis quinquaginta
 militibus eodem capite punietur eiusdem legis capite
 secundum tenetur, Kp dcccii. Qui alieno seruo
 psuaserit ut dominum fugiat qui uę alienum seruum 25
 inuito domino celauerit, uendiderit emerit dolo malo
 quie in ea re socius fuerit iubeturque populus extertiā
 quinquaginta milia dare et reliqua/ sciendum tamen est
 ex nouellis constitutionib; capit^{alis} sententia plagia
 tores p atrocitate facti puniendos quāuis et paulus 30

Line.

1. sub titulo de officio proconsule, *trans-*
pose de officio proconsulis sub titulo.
3. cesari, *read* caesaris.
4. quam romę tam in prouintiis (ti = ci)
Huschke, quum . . . tum. *M. retains*
text but transposes tam in prouintiis
quam Romae.
6. superare = super ea re (V.).
7. inuia, *read* iniuria (*Pithou*).
8. puintiam *read* provincia; enim, *read*
est.
10. iniunguntur, *read* iniungitur; *after*
quam *supply* si.
11. plenę = plane (V., W.).
12. parte, *M. writes* partes; *for* huius certe
adtamen, huiusce rei attamen; *i for*
pcuratori, *read* procurator.
13. illam, *read* nullam (M.).

Line.

14. fabiam *read* fabia.
16. alteris, *read* adulteris (V., W.).
17. accipit, *read* accepit (V.).
18. eundemque, *read* eumue (*Pithou*).
20. uindiderit = uendiderit.
21. poenam, *read* poena.
22. qui, *read* quis (Pauw); sextertiis *read*
sestertiis.
23. militibus, *read* milibus, *and for* pu
nietur, punitur.
24. secundum, *read* secundo.
26. uendiderit, *omit the d before r as*
indicated in Codex by the dots
round it.
27. populus, *read* populo; extertia, *read*
sestertia.
29. constitutionib = constitutionibus; capi
t^{alis}is, *read* capitali.

relatis supra speciebus crucis et m[etalli poenam]
huiusmodi eis inrogauit poen[am. Ex]p[er]t TITUT, ,
KP DCCXIII: INCIP XV. DE MATHEMATICIS
et manicheis moyses dicit. Non inueniatur in te
qui lustret filium tuū aut filiā tuā nec diuinus apud 5
quem sortes tollat nec consentiat uenerariis in
postoribus qui dicunt quid co'septum habeat mulie
ri qm fabulę seductorie sunt, nec intendas p̄digia
nec interroges mortuos non inueniatur in te augu
riatur nec inspector auium. nec maleficus aut in 10
cantator, nec pitonem habentē in uentrem. nec ca
ruspex nec interrogatur mortuorum, nec porten
ta inspiciens omnia namque ista a domino dō tuo
damnata sunt. et qui fecerit hec p̄pter has enim
abominationes. d̄s eradicauit caldeos a facie sua. 15
tu autem p̄fectus eris ante dnm d̄m tuū. gentes enī
iste quas tu possides uuguria et sortes et diuinatio
nes audiebant. KP DCCXIII, ULPIANUS LIBRO
vii. de officio p̄consulis sub titulo de mathemati
cis et uaticinatorib; preterea interdictos est ma 20
thematicorum callida inpostura et obstanici
tate psuasio, nec hodie primū interdici eis pla
cuit sed uetus hec p̄hibitio est. denique extat
senatusconsultum: KP DCCXV. POMPONIO
et rufo consules. factum quo canetur ut ma 25
thematicis caldeis ariolis et ceteris qui similē
incertum fecerunt aqua et igni interdican
tur omniaque bona erum publicentur, et sic
eternus gentium qui si id fecerit. ut in eū anim
aduertatur. sed fuit quesito utrum scientia 30

Line.

1. poenam *omit.*
2. eis, *read* reis (V., cf. W.); inrogauit, *read* inrogauerit (V., W.).
4. *Before* et *supply* maleficis.
5. Deut. 18: 10 (*Biblical reference*) on *margin by later hand.*
6. *For* tollat, *read* tollas; *for* consentiat, consentias; *for* uenerariis, uenenariis (W., cf. V.).
7. co'septum, *read* conceptum (V., W.).
- 7 and 8. mulieri, *read* mulier; seductorie, *read* seductoriae.
- 9 and 10. auguriatur = augurior.
11. pitonem = pythonem; habentē, *read* habens.
- 11 and 12. caruspex = haruspex.
12. interrogatur = interrogator.
13. namque = namque; dō = deo.

Line.

15. d̄s = deus; eradicauit, *M. (with Sept.) reads* eradicabit; caldeos = chaldeos (V., W.); sua, *better* tua (cf. *Sept.*).
17. iste, *read* ista; uuguria = auguria.
20. interdictos, *read* interdictum (V., W.).
- 21 and 22. obstanicitate, *read* obstinata (M.); and *for* psuasio, *read* psuasione (V., W.).
25. consules, *read* consulibus; and *for* canetur, *read* cauetur.
- 26 and 27. similē incertum, *read* simile inceptum (*Huschke*).
- 27 and 28. interdicantur, *read* interdicatur (V., W.).
28. erum, *read* eorum; sic, *read* si.
29. eternus, *read* externarum (cf. V. and W.); qui si, *read* quis.
30. quesito, *read* quaesitum or questio.

[illegible]

hui[us]modi hominum puniatur an exercitio et pro
fessio quidem apud ueteres dicebatur professio
nem eorum non noticiam esse prohibitam postea
uariatum, nam dissimulandum est nonnumquam
inrepsisse in usum, ut etiam profiterentur, et publice 5
reprehenderent, quod quidem magis per contoma
ciam et temeritatem eorum factum est qui uisi
erant uel consulere uel exercere quam qui fue
rant permissum sepiissime denique interdictum est
fere ab hominibus principibus ne quis omnino huiusmodi 10
ineptiis se immiscerent et uariae punit, sunt hii
quid exercuerunt per mensura scilicet. et consultationis,
nam qui de principis salute capite puniti sunt. uel
qualia poena grauiore adfecti enim uero si quidem
suasorumque leuius inter hos habentur, quam 15
uaticinatores hii quoque plectendi sunt. quam non
numquam contra publicam quietem imperium que
populi romani inprobandas artes exercent, extat
denique decretum. Kp dcccxvi. diui pii ad pacatum
legatum punitie lugdunensis, cuius rescripti uerba 20
quia multa sunt de fine eius ad locum hec pauca sub
iecit. denique diuus marcus eum qui motu cassiano
uaticinatus erat, et multa quasi extinctum deorum
dixerat in insula syrum relegauit. et sane non debent
inpune ferre huiusmodi hominis qui sub obtentum et 25
monitu deorum quedam uel renuntiant uel iactant
uel scientes eos fingunt, KP DCCXVII: GREGORIANUS
liber vii. de maleficis et manicheis sub titulo comp
maximus dioclicianus et maximianus nouelissimi
a. a. iuliano pconsule africae otia maxima interdum 30

Line.

2. *Before* quidem *supply* et.
4. *nam*, *read* nec.
6. reprehenderent, *read* se praeberent.
6 and 7. contomaciam = contumaciam.
7. uisi, *Pithou reads* ausi.
8 and 9. qui fuerant, *read* quod fuerat.
9. sepiissime = saepissime.
10. hominibus, *read* omnibus.
11. immiscerent, *read* immisceret; *for* punit,
puniti; *for* hii, ii.
12. *For* quid, *read* qui id; *for* exercuerunt,
exercuerint; scilicet. et, *omit* et.
14. qualia, *read* qua alia (V.).
14 and 15. quidem suasorumque, *read* qui
de sua suorumque (Jac. Gothofred).
5 and 16. quam uaticinatores, *M. writes*
uaticinatores quamquam.

Line.

16. hii = hi.
21 and 22. subiecit, *read* subieci.
23. extinctum, *read* instinctu.
24. insula, *read* insulam.
25. hominis, *read* homines (V., W.), and
for obtentum et, obtentu ex.
26. renuntiant, *read* enuntiant (V., W.).
27. eos fingunt, *Pithou omits* eos and
reads conungunt.
28. de maleficis et manicheis sub titulo,
read sub titulo de maleficis et mani
chaeis. comp, *read* imp (impera
tores).
29. maximus dioclicianus, *M. has* Diocle
tianus et Maximianus, a. a. [et Constan
tius], nouelissimi = nobilissimi.
30. 'a a', *M. has* c. c. pconsule, *read* pro
consuli.

[illegible]

homines in communionem co[n]ditionis naturae]
hominem modum excedere hor[tantur] et [quaedam]
genera inanissima hac turpissima doctrinae sup-
stitutionis inducere suadent. ut sui erroris arbitrio
ptrahere et alios multos uideantur. Iulianę Karissi 5
mę sedi inmortale puidencia sua ornare et dispo-
nere dignati sunt quę bona et uera sunt. et multorū
et bonorum et egregiorum uirorum et sapientissi-
morum consilio et tractatu inlibata pparentur
et statuerentur. quibus nec obuiam ire nec resistere 10
fas est. neque reprehendi a noua uetus religio debere
maximi enī criminis est. sed tractare que semel ab anti-
quis tractata et definita sunt statum et crusum
tenent hac possident. unde ptinatiā prauę mentis
nequissimorum hominum punire ingens nobis studiū 15
est. hi enim qui nouellas ex inauditas rectas deteriorib3
religionibus obponunt. ut p arbitrio suo prauum ex-
cludant que diuinitas concessa sunt. qm nobis de qui-
bus sollertia tua serenitati nostre retulit ma-
nicheus audiuius eos nuperrimę uelut noua 20
inopinata pdigia in hunc mundum de psica aduer-
saria nobis gente pgressa uel orta esse. et multa fa-
cinora ibi committere populus namque quietos
pturbaret. nec non et ciuitatibus maxima de-
trimenta inserere et uerendum est ne forte ut 25
fieri adsolet accendenti tempore conentur exe-
crandas consuetudines et istebas leges psarum in
nocentioris nature homines romana gente modes-
tā adque tranquillam. et uniuersum urbem nrum
ueluti uenenis de suis maliuolis infigere, et quia omnia 30

Line.

1. communionem, *M. has* communione.
2. hominem, *read* humanae (V., W.).
- 5 and 6. Iulianę Karissimę, *read* without *cedillas*.
6. sedi inmortale, *read* sed dii inmortales; ornare, *read* ordinare (V.).
7. et multorū, *read* ut multorum (*Cujas*).
9. pparentur = probarentur.
11. debere, *M. has* deberet.
12. sed tractare, *read* retractare; que = quae.
13. tractata; *read* statutā with V.; for sunt, suum (*Pithou*); for crusum, cursum.
14. hac, *read* ac.
16. ex, *read* et; for rectas, sectas (W.); for deteriorib3, ueterioribus.

Line.

17. prauum, *read* prauo.
18. que = quae; diuinitas, *read* diuinitus; for qm = quoniam, *read* quondam.
19. nostre = nostrae (*Cujas*).
20. nuperrimę = nuperrime; uelut = ueluti.
21. Before inopinata supply et.
23. populus, *read* populos.
24. pturbaret, *read* pertubare.
26. accendenti, *read* accedenti; after conentur supply per (*Pithou*).
27. istebas, *read* scaeuas (*Pithou*).
28. nature = naturae; romana gente, *read* Romanam gentem (V.W.).
29. adque = atque; urbem, *read* orbem.
30. infigere, *read* inficere (*Cujas*).

qu[ae pandit prudent]ia tua in relationem religionis
 ill[orum genera] maleficioꝝ statutis euidentis
 simorum ex[q]uisita et ad inuenta commenta ideo
 eorum maenas adque poenas debitas et condig
 nas illi statuimus. iubemus namque auctores qui 5
 dem ad principes una cum abominandis scripturis
 eorum seueriori poena subici ita ut flammeis ignibꝫ
 exurantur consentaneos uero, et usque ad eos conten
 ciosos capite puniri precipimus, et eorum bona fis
 co nro uindicari sancimus, si quis sane etiam honorati 10
 aut cuiuslibet dignitatis uel maioris psonae adhuc
 inauditam et turpem adque p omnia infamem se
 cutā uel ad doctrinam psarum se transtulerunt
 eorum patrimonia fisco nostro adsociari facies
 ipsos quoque forensibus uel pconsensibus metallis dari 15
 ut igitur strepitus amputari malis hec nequitie
 de seculo beatissimo nostro possit deuotio tua iussis
 ac statutis tranquillitatis nostre maturius obse
 cundare. dāt prid pl. april. alexandriae:
 ExpL̄ TITULUS DE MATHEMATICIS MALEFICIS 20
 ET MANICHEIS. INCIP TITULUS XVI DE LEGITI
 MA SUCCESSIONE; Scriptura diuina sic dicit
 filiꝫ salfade adstantes ante moyses et eleataꝝ
 sacerdotem et principem omnemque senatu filicꝝ
 ih̄l. in foribus tabernaculi testimonii dixerunt, 25
 pater noster mortuus est. et filii non fuerunt ei
 sed filiae et ideo non deleantur nomen patris nri
 de medio tribus sua non est ei masculus date nobis
 possessionem in medio fratrum patri nostri, et obtu
 lit moyses petitionem earum domino dō et locutus 30

Line.

1. relationem, *read* relatione.
- 2 and 3. euidentissimorum, *M. has* euiden-
tissime sunt. ad inuenta, *read* inuenta
(V., W.).
4. eorum maenas, *read* aerumnas (V., W.).
adque = atque.
5. illi, *read* illis (*Schulting*).
6. ad = ac (V., W.).
7. consentaneos, *Huschke reads* consec-
taneos; ad eos, *read* adeo (*Pithou*).
8. quis, *read* qui.
9. maioris, *M. maiores. Before* adhuc *M.*
supplies ad.
10. adque = atque.
- 11 and 12. secutā *read* sectam (cf. V.
secta).

Line.

13. psarum = persarum. transtulerunt,
read transtulerint.
14. forensibus, *read* Phaenensibus (*Pithou*).
pconsensibus = proconsensibus.
15. strepitus, *read* stirpitus (V., W.). malis,
lues, *M.*
16. nostre = nostrae. maturius, *read* ma-
turet (*Huschke*).
17. salfade, *M. reads* salfad. moyses, *read*
moysen, eleatar, *read* Eleazarum
(W.).
18. principem, *read* principes (V., W.).
senatu, *read* senatum (V. W.).
19. ih̄l = Israhel.
20. deleantur, *read* deleatur (V., W.).
21. sua, *read* suae.
22. domino dō, *read* coram deo (W.).

Feb 21. 16

Legitima sic ordinat successione fratruum hęc
dicuntur leges undecim. tabularum primū ad suos
heredes patrit. si autē heredes & instituitur liberi
qui in potestate manent fuerint uel unus filius uel
nepus neptis & nepus & neptis & nepos & filia
pignator pignatō ut neclat esse naturā liberi
nā dicitur l. ad dñm a tñm nepus neptis & nep-
pnepos & filia sui ut heredes numerosi n. si pcedit
p. sona de iur. sue u. r. tione uel in emancipatione
nam si p. dñm a tñm quousque monēt filius in pot-
estate uel si nepus & filius heres esse non potest

tepdece. Ioh. de. h. accens. de h. n. p. s. liberarum
 p. m. s. d. i. c. t. u. m. i. n. t. e. l. l. e. g. i. m. u. s. q. u. o. r. q. u. o. q. u. e. q. u. e. l. i. m. a.
 n. u. e. n. i. s. e. s. t. i. n. a. h. e. r. e. s. e. s. t. q. u. i. a. p. i. l. i. e. l. o. c. e. s. t. . i. n. t. i. n. n. u.
 r. u. s. q. u. e. l. i. n. f. i. l. i. m. a. n. u. s. e. s. t. . n. o. r. e. h. e. n. e. p. t. i. l. o. c. e. s. t. . i. d.
 i. a. c. c. e. d. i. n. u. m. e. n. t. i. a. h. e. r. e. s. i. l. i. u. s. c. u. i. u. s. i. n. m. a. n. u. s. e. i. u. s.
 d. u. m. p. o. a. t. s. m. o. n. t. u. r. h. i. p. o. a. t. e. s. t. e. e. i. u. s. n. o. n. s. i. t.

h̄p̄dcccxi. Idem quædiciuntur & de aliquo nepo
manumachymonicausasia que apnepo q̄r loco est
postumiquoque sinuoparente nati essent in poat̄
etate eius futuri forent. iulheredes sunt.

k p d c c x c i i . f o e a i u n s e s t d e h i s q u o z n o m i n .

est dñs moysi dicens. recte fili[ae salpade locutae sunt]
 et ideo dabitis eis possessionem [hereditatis in me]
 diū fratrū patris earum. et dicimu[s hec] filiis ih̄
 homo si decesserit et filius non habuerit dabitis here
 ditatem pximum eorum de tribu eius, et possidebit 5
 omnia eius. et erit hec filios ih̄ iustificatio iudiciorum
 secundum que constituit dñs moysi. Libro III. institutio
 KP DCCXVIII. GAIUS INSTITUTIONŪ LIB III. nū
 Legitimas sic ordinat successionē statutorum here
 ditates lege duodecim tabularum primū ad suos 10
 heredes ptinent. si autē heredes existimantur liberi
 qui in potestate morientis fuerint ueluti filius filia uel
 nepus neptisue pxnepus pñeptisue ex nepote filio nato
 pgnatos pgnata uē nec interesse naturales liberi a
 n adoptibi ita demum tamen nepus neptis uē et pñep3 15
 pnepotesue suorum heredum numero sunt. si precedens
 psona desierit siue alia ratione ueluti emancipatione
 nam si p idem tempus quo quisque morietur filius in potes
 tate eius sit nepus ex eo suus heres esse non potest
 KP DCCXX. IDEM ex in ceteris deinceps liberorum 20
 psonis dictum intellegimus uxor quoque que in ma
 nu eius estis sua heres est quia filiū loco est, item nu
 rus que in filii manus est, nec et hec neptis loco est, sed
 ita demum erit sua heres filius, cuius in manus eius
 dum pater moritur in potestate eius non sit; 25
 KP DCCXXI. IDEMque dicimus, et de eaque nepotis
 manu matrimonii causa sit quē a pnepotis loco est
 postumi quoque si uiuo parente nati essent in potes
 tate eius futuris forent, sui heredes sunt.
 KP DCCXXII. IDEM iuris est de his quoR nomina 30

Line.

1. salpade, *read* salfad.
- 2 and 3. mediū, *read* medio (V., W.).
3. dicimus, *read* dices (cf., dicis, V.).
4. filius, *read* filium; *before* dabitur a large portion of the text has fallen out.
5. pximum = proximo.
6. filios, *read* filiis. ih̄ = Israhel.
7. que = quae; Libro III institutionū, omit as interpolation.
8. Lib. 2, Tit. 16, (reference to Gaius) on margin by later hand.
9. successionē statutorum, *read* successiones intestatorum.
11. si, *read* sui.
12. fuerint, *read* fuerunt; *for* filia uel, filiaue.
13. nepus = nepos; *after* neptisue add ex filio; pñepus, *read* pronepos.
14. pgnatos, *read* prognatus; *for* interesse, interest (Just.); *after* naturales supply sint (Just.).
15. adoptibi, *read* adoptiui; pñep3 = pronepos.

Line.

16. pnepotesue, *read* proneptisue.
17. *After* desierit supply in potestate parentis esse siue morte id acciderit (Just.).
20. ex, *read* et.
21. que = quae.
- 21 and 22. *After* manu supply est; *for* eius estis *read* ei cuius in manu est (M.).
23. que = quae; manus, *read* manu; *for* nec, nam (V.).
24. *After* heres, supply si; manus eius, *read* manu.
25. dum, *read* cum.
26. ea que, *read* ea quae; *after* ea que supply in.
27. quē a, *read* quia.
28. *After* quoque supply qui.
29. futuris, *read* futuri.
30. quoR = quorum; nomina, *read* nomine (Pithou).

et deinceps ad defunctum consultum post
 mortem eiusdem patris in potestate eius su-
 comessent. Et deo filio qui secundum secundam quæman-
 cipacionem post mortem patris manum mutatur
 in auctoritate cum filio patris. Et deinceps filio
 potest ut hereditatem patris ad hereditatem vocan-
 tur. nec quicquam proprium est uterque soluit et
 quam in unum deatur nepotes nepotes vel in potestate suo loco
 porcionem que succedere potest in actionem. Et sine
 potest nepotes sit et filio. Et deinceps nepotes nepotes simul
 vocantur. Et quicquid debeat nepotes nepotes sue.
 lxxviii. Item nepotes nepotes in potestate
 suo loco succedere conueniunt non in auctoritate sed in
 filio huius dicitur diuidit ut filius dum diuidit
 ad hereditatem fructus debeat filio. Et deinceps
 ut nepotes aditum diuidit. lxxviii
 Item si ex duobus filiis nepotes debeat debeat
 filio unius forte vel debeat in res aut quædam in
 debeat ad diuiditum debeat cognoscit si uult in auctoritate
 hereditum tunc hereditas patris. Et deinceps legi duo
 decim ad diuiditum debeat cognoscit uocantur. autem
 agnati qui legitima cognatione uincantur legitima
 autem cognatio hoc est que per unum sexum
 agnati. Itaque eodem patre nascuntur. fratres agnati
 uisum quidiam coniungunt uocantur nec requir-
 tur. autem eadem habuerunt. lxxv.
 Item potest uisum fratres filio et in uicem illi agnatur
 et eodem uisum sunt fratres potest in auctoritate
 id est que de duobus fratribus per unum agnunt quos plerique
 etiam consanguineos uocant quæ ratione scilicet etiam

[ex lege aelia sentia] uel ex senatum consultum post mortem [patris causa] pbata in potestate eius futuri essent, et de eo filio qui ex prima secundaque emancipationem post mortem patris manum mittitur intellegimus cum filiis filiaue et ex altero filio ne potesue existent pariter ad hereditatem uocantur. nec qui gradum proprium est ulteriore excludit et quam enim uidetur nepotes neptesue in patri sui loco portionemque succedere patri rationem, et si nepus neptisue sit ex filio, sed ex pnepus pneptisue simul uocantur, et quia placebat nepotes nepotes ue, KP DCCXXIII. Item pnepotes pneptesue in patri sui locum succedere conueniens non in capita sed in stirpem hereditatis diuidit ut filius dimidiam partem hereditatis fruatur ex altero filio duo plures ue nepotes alteram dimidiam: KP DCCXXIII, ITEM SI EX DUOBUS filiis nepotes extent ex altero filio unus forte uel ex altero ires aut quattuor altera dimidiam de agnatis si nullus sit suorum heredum tunc hereditas pertinet, et eadem lege duo decim tabularum ad agnatos uocantur autem agnati qui legitima cognatione iuncti sunt legitima autem cognatio hoc est que per uirili sexu persona coniungitur, itaque eodem pater nati sunt. fratres agnati uisi sunt qui etiam consanguinei uocantur nec requiritur an matre eadem habuerint. KP DCCXXV, ITEM patruus fratris filio et inuice his illi agnatus est eodem numero sunt fratres patruales inter se, id est qui ex duobus fratribus pgenerati sunt quos plerique etiam consoprinus uocant qua ratione scilicet etiam

- Line.
 1. senatum consultum, *read* senatus consulto (V.).
 2. *After* causa *supply* probatur; nam et hi uiuo patre causa (Gaius).
 3. *After* essent *supply* quod (Gaius); *for* secundaque, *read* secundaue.
 3' and 4. emancipationem, *read* mancipatione.
 5. intellegimus, *read* intellegemus and *add* igitur.
 5 and 6. nepotes ue, *read* nepotes neptesue (Gaius).
 6. existent, *read* extant (M.).
 7. gradum, *Pithou* gradu. proprium, *read* propior (Pithou). ultiore, *read* ulteriorem.
 7 and 8. et quam, *read* aequum.
 8. patri sui loco, *read* patris sui locum.
 9. patri rationem, *read* pariratione (V., W.)
 10. sed, *read* et (V., W.); *before* pnepus *insert* nepote, and *read* pronepos.
 11. nepotes ue *read* neptes ue (V.).
 12. patri, *read* patris.

- Line.
 13. conueniens, *read* conueniens esse uisum est.
 14. stirpem, *read* stirpes; *for* hereditatis, *read* hereditates; *for* diuidit, *read* diuidi ita (M.).
 15. fruatur, *read* ferat and *add* et.
 18. *After* uel *add* duo ires, *read* tres; *after* quattuor *supply* ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor.
 19. dimidiam, *read* dimidia.
 20. et = ex (V.).
 22. iuncti, M. has iuncti.
 23. hoc, M. omits, *but better read* haec (Huschke); que = quae; uirili sexu, M. has uirilis sexus; psona, *read* personas.
 24. *After* itaque, M. *supplies* qui; pater, *read* patre.
 25. uisi, M. has sibi.
 26. matre eadem, *read* matrem eandem.
 27. inuice, *read* inuicem; his = is.

ad plures gradus agnitionis puenire potuerimus [n]on
 tamen omnib3 simul agnatis dat lex duo[deci]tabu
 larum hereditatem, sed his qui tunc certum est aliquē
 intestato decessisset pximo gradu sunt, nec in eo iure
 successio est. ideoque si heredes pximos omiserint uel ante 5
 quam hereditatem adierit decesserit sequentib3 nihil
 iuris ex lege competit, ideo aū n̄ mortis tempore certū
 fuerit aliquem in testamentum decessisse quam si quis tes
 tam̄to facto decesserit melius esse uisus est tunc requiri
 pximū cū certū ēē coeperit neminem ex testam̄to heredes 10
 forte qui ad feminas adtinet hoc iure aliud in ipsarū here
 ditatib3 capiendis placet aliud in ceterorum ab his capi
 endis, nam et feminarum hereditates p̄inde agnationis iu
 re redeunt adq3 masculorum nrē uero hereditates ad femi
 nas ultra consanguinei eorum gradum non ptinent, itaq3 15
 soror fratri sorori uq̄ legitima heres est. amita uero et
 fratris filia heres esse non potest sorores aū nob̄. loco est
 etiam mater aut nouerca que p̄ in manum conuentionē
 aput patrem nr̄um ius filiē cuncta est, si quis defunctus erit
 si sit frater et alterius fratris filius sicut ex uerioribus 20
 intellegitur frater pocior est quia gradu precedit. sed alia
 faciat iuris interpretatio inter uos heredes. quod si defunc
 ti nullus frater exstet, sed sint liberi fratrum ad omnes
 quidem hereditas ptinet, sed quesitum est si dispari nume
 ro sint forte nati ex uno unus uel duo, et ex altero tres 25
 aut quattuor utrum in stirpes diuidenda sit hereditas,
 sicut inter uos heredes iuris est pocius in capita iam du
 dum aū placuit in capita diuidendā hereditatē itaq3
 quodquod dederunt ab utraque parte psonē in tot por
 tiones fuerunt si nullus agnatus sit eadem lex duodecim 30

Line.

1. agnitionis, *read* agnationis. potuerimus, *read* poterimus (W.).
3. tunc, *M. has* tum cum.
4. intestato, *read* intestatum. decessisset, *read* decessisse.
5. heredes, *read* hereditatem; pximos, *read* proximus; omiserint, *read* omiserit.
6. sequentib3 = sequentibus.
7. aū = autem non. *After* tempore *supply* quis proximus fuerit requirimus sed eo tempore quo (V., W. and *Gai.*).
8. in testamentum, *read* intestatum. quam, *read* quia (*Gai.*).
- 8 and 9. testam̄to = testamento.
9. uisus, *read* uisum.
10. ēē = esse; *supply* eo *before* testam̄to (*Gai.*). heredes, *read* heredem.
11. forte, *read* fore; qui, *read* quod; *before* adtinet, *supply* tamen (V., W.).
13. nam et, *Gaius omits* et.

Line.

14. adque = atque. nrē = nostrae.
15. consanguinei eorum, *read* consanguineorum (W.).
17. sorores, *read* sororis (V., W.). aū nob̄. = autem nobis.
18. que, *read* quae.
19. cuncta, *M. has* nanta, *Huschke* consecuta. *After* si *supply* ei. quis *for* qui.
20. si sit, *M. omits* si. *For* uerioribus *read* superioribus.
22. faciat, *read* facta est. uos, *read* suos.
27. uos, *read* suos (V., W.); *before* pocius = potius, *insert* an (V., W.).
28. aū = autem.
29. quodquod dederunt *read* quotquot erunt (V., W.).
- 29 and 30. *After* portiones *supply* hereditas diuidetur et singuli singulas portiones.
30. fuerunt, *read* ferunt.

ad hoc non generaliter ad heredes accipiuntur uocantur quilibet
 accipiuntur pro modo in uocato dicitur inest
 cum ille cedens non sit in hereditate sua sed in hereditate
 ab eis supra eum est hoc quoque loco dicitur de iuribus suis ad hoc
 h. p. de c. xvi. Paulus lib. i. de iuribus vi. sub titulo
 de testamento. cum successione; interfecti dicuntur
 qui in hereditatem facere non possunt uel ipsi iuribus ut
 interfecti decederunt ab eis perunt uel in quorum
 hereditate regulariter est. cum uel in condicio de peccatis
 sine iure preterito facta. testamentum. ab eis de iure & p. de
 accione optinebit eorum quorum testamentum sumptum
 aut in iura sunt ipsi quidem iure. testamentum dicitur
 dunt in testamentum hereditas legat uel in iura ab eis
 primum suis hereditas ab eis de iure regitur & aliquando
 quoque g. ab eis de iure regitur sine consensu iuribus
 cedens hereditas inter ipsos non potest longum primum
 inter cognatos loco accipiuntur si heredes sunt hoc
 primo loco primum placet in potestate perant constituat
 nec inter est si adoptionis inter uel in iura & secundum
 legem lib. i. primum quod si modum accipit in potestate
 accipit qui si heredes sunt ipsi iure heredes & si ignoran
 tes constituuntur ut funosi aut in potestate & p. de g.
 nantes quibus bonorum possessionis p. p. accipit preterito
 accione in iura necesse in iura hereditas de eo ut mor
 tui testamentum regum hereditas accipit in iura in iura
 aut ut necesse in iura accipit in iura pupillari & funosi in iura
 aut si necesse in iura in iura in iura in iura in iura
 quam ut etiam funosi in iura in iura in iura in iura in iura
 ab iura in iura in iura in iura in iura in iura in iura
 in iura in iura in iura in iura in iura in iura in iura

tabularum gentiles ad hereditatem uocat qui sunt
 autem gentiles primo comentariorum et ultimum est
 cum illic admouerimus gentilicium ius in desuetudinē
 abisse supuacuum est hoc quoque loco de ea re curiosius tractare
 KP DCCXXVI. PAULUS liber sententiarum vii. sub titulo, 5
 de testamentorum successionib3 intestati dicuntur
 qui testamentum facere non possunt, uel ipsi linum ut
 intestati decederent abruperunt uel hii quorum
 hereditas repudiata est. cuius nec condicio defecerit
 sine iure pretorio factū testamētū abiecta doli expec 10
 tatione optinebit eorum quorū testamēta rumpun
 tur aut inuita fiunt ipso quidem iure testamēti dece
 dunt intestatorum hereditas lege duodecim tabulā
 primum suis hereditatib3 deinde agnatis et aliquando
 quoque gentib3 deferebatur sane consanguineis lex n̄ 15
 adprehenderat interpretationē prudentium primū
 inter agnatos loco acceperunt sui heredes sunt hoc
 primo loco filius filia in potestate patris constituti
 nec interest si adoptiui sint an naturales. et secundū
 legem Iulia pipiamue quesiti modo maneant in potes 20
 tate qui sui heredes sunt ipso iure heredes etiā ignoran
 tes constituuntur ut furiosi aut infantes et pereгри
 nantes quibus bonorum possessionis ppter pretoriā
 actionem non erat necessariā sui heredibus adeo ad mor
 tem testatoris rerum hereditariorū dominiū continua 25
 tur. ut nec tutoris auctoritas pupillo nec foriosis cura
 tur sit necessarius nisi forte soluenda sit hereditas
 quamuis etiam furiosus si resipierit et pupillus si adoleuerit.
 abstinere possint post mortem patri natus, uel ab hostib3
 reuersus aut ex primo secundoue mancipio manumissus 30

Line.

1. sunt B^a, *read* sint B^b.
2. comentariorum et ultimum est, *read* commentario retulimus et (*Gai.*).
3. admouerimus, *read* admonuerimus (*W.*).
5. liber, *read* libro; for vii, *read* viii.
6. testamentorum, *read* intestatorum.
7. *After* possunt, *M. inserts* uel iure non fecerunt cum possent.
9. cuius nec, *M. has* quibusue.
10. sine, *Huschke reads* nisi, *Cujas* sane; *after* pretorio *add* non iure (*M.*); abiecta, *read* obiecta.
- 10 and 11. expectatione, *read* exceptione.
11. eorum, *M. has* horum.
12. inuita, *read* inrita; for testamti, testati.
- 12 and 13. *After* decedunt *read* sed per consequentias sublato testamento intestati decedunt (*V., W.*).
14. hereditatib3 = hereditatibus, *read* heredibus.

Line.

15. gentib3, *read* gentilibus; for consanguineis, consanguinei quos (*Cujas*); n̄ = non.
16. interpretationē, *read* interpretatione.
17. loco, *read* locum. hoc, *M. omits*, *Huschke reads* hi.
20. pipiam, *read* papiam.
23. possessionis, *read* possessio nisi (*Van-gerow*).
24. necessariā, *read* necessaria; for sui, suis; ad mortem, *read* a morte.
25. hereditariorū, *read* hereditarium.
26. pupillo, *read* pupillis (*V., W.*); for foriosis, furiosis.
- 26 and 27. curatur = curator.
27. *After* forte *Krueger supplies* ut abstineant si minus forte; for soluenda *read* soluendo.
28. resipierit, *read* resipuerit (*W.*).
29. patri, *read* patris.

— 50 —

cuiusue erroris causa pbata licet non fuerint in potes
 tate sui tamen patri heredes efficiuntur post filios
 filias ad intestatorum successionem inter suos ueniant
 nepotes neptes pnepotes neptes pnepotes hac deinde mas
 culino sexum post filium descendentes si nullum parentū 5
 impedimento ipsi in aui potestate uel paui famili remanserit
 parentes enim liberis suis cum quibus in potestate fuerunt
 ipsi ordinem successionis obsistunt filius cum nepotibus
 ex alio filio susceptis infamia retinentur ab intestato
 patris successionē cum fratris filii uocantur in quibus 10
 in patris sui parentem uenientib3 hereditas in styrpes non
 in capita diuiduntur ita ut filius ex plures nepotes singu
 los semisses habeant, idque enit si abeo ex duobus filiis
 inpatrum numero nepotes successerint ex filia nepotes
 sui heredes non sunt in auie enim materni potestate alie 15
 nam familiam sequentes ipsa rationem esse non possunt
 eo tempore suus heres constituendus est, quo certum est
 aliquem intestatum decessisset quod ex euentu deficientis
 condicionis et hortū nepotis qui uiuo auo post mortē patris
 natus iniri potest cum filius et mancipatus suscipit, uel 20
 adoptauit sui heredis locum in aui successione sicut ipse
 pater obtinere non potest adoptiuus tam ne quasi
 cognatus bonorum possessionum eius potire potest
 si sui heredes non sunt ad agnatos legitima hereditas
 ptinebit inter quos primum locum consanguinei opti 25
 nent agnati autem sunt cognatis uirilis sexus p uirilem
 descendentes sicut filius fratris et patruus, et dein
 ceps tota successio inter agnatos et cognatos hoc
 interest in agnatis enim etiam cognati continentur
 inter agnatos uero agnati non comprehenduntur 30

Line.

1. After pbata supply est.
3. ueniant, read ueniunt.
5. sexum, read sexu; post, read per (Rittershusius); nullum, read nullo.
6. famili, read familia; remanserit, read remanserint.
8. ordinem, read ordine; filius, read filii si.
9. infamia, read in familia; ab intestato, read ad intestati (V., W.).
10. in, omit (M.).
11. parentum, read partem; styrpes, read stirpes.
12. diuiduntur, read diuiditur; filius ex, read unus filius et (V., W.).
13. idque, read idemque (Pithou); abeo, read auo.
14. inpatrum, read inpari.

Line.

15. auie, read aui.
16. rationem, read ratione.
17. constituendos, read constituendus.
18. decessisset, read decessisse.
19. hortū, M. ortu. After patris, M. has conceptus sit et post mortem aui.
20. iniri, M. has finire; cum, read quem; et mancipatus, read emancipatus.
22. After potest M. adds a second potest; ne, read nec (Blume).
23. possessionum, M. has possessionem; potire, read petere.
26. cognatis, read cognati. After uirilem supply sexum.
29. After interest add quod (Paulus); enim omit.
30. agnatos obvious error for cognatos (W.).

et ideo patr[uu]s agnatus est et cognatus abunculus
autem cognatus tantum modum est consanguinei
sunt, eodem patrem nati licet diuersis matrib3 qui in
potestate fuerunt mortis tempore adoptiuus quoq3
frater si non sit emancipatus, et hi qui post mortem 5
patri nati sunt uel causa pbauerunt soror iure consan
guinitatis, tam ad fratris quam ad sororis heredi
tatem admittitur consanguineis non existentibus
agnatis defertur hereditas put quis alterū gradū
precesserit quodsi plures eodem gradum consistunt 10
simul admittuntur si sit frater defuncti et fratris
filius et nepus fratres et non existentes filius fratris
nepoti pfertur, sed si duorum fratrum sint liberi
non in stirpes sed in capita hereditas distribuitur scili
cet ut p numero singulorum uirium distribuatur hereditas 15
feminę ad hereditates legitimas ultra consangu
neas successiones non admittantur. id quod iure ciuili
uoconia rationem uidetur effectum ceterum lex duo
decim tabularum sine ulla discreptiones ex his
cognatos admittit, KP DCCXXVII. ULPIANUS 20
libro singulari sub titulo de legitimis hereditatib3
intestatorum gentiliciorum hereditates ptinent
primum ad suos heredes, id est liberos qui in potestate
sunt ceterosque qui liberorum loco sunt, si sui heredes
non sint ad consanguineos, id est fratres et sorores ex eo 25
dem patrem si nec hi sunt ad reliquos agnatos uirilil se
xus p matres descendentes eisdem familię his enim cau
tum est legem duodecim tabularum hac si intestatus
moritur cuius heres nec est agnatus pximus familia
habeatur. si agnatus defuncti non sit eamdem lex 30

Line.

1. abunculus, b for u.
2. modum, *read* modum (V., W.).
3. patrem, *read* patre.
6. patri, *read* patris; for causa, causam.
9. gradū, *read* gradu.
10. gradum, *read* gradu.
- 11 and 12. si sit frater defuncti et fratris
filius et nepus, *M's. reading is* si sint
defuncti fratris et filius et nepos.
12. fratres et non existentes, *read* fratre
non existente (V.).
13. pfertur, *read* praefertur (V., W.).
15. uirium, *read* uiritum (V.).
- 16 and 17. consanguineas, *read* consanguin-
eorum (*Huschke*).
17. admittantur, *read* admittuntur.
18. uoconia, *read* Voconiana; for rationem.
ratione.

Line.

19. discreptiones, *read* discrezione; for
ex his, sexus.
20. cognatos, *M. omits, but Huschke*
reads agnatos.
21. Before sub titulo *supply* Regularum,
added on margin by later hand.
24. ceterosque, *faulty cedilla.*
25. sint, *read* sunt (M.).
26. patrem, *read* patre; after agnatos
supply proximos id est cognatos
(*Blume from Ulpian*).
27. matres, *read* mares; for eisdem, eius-
dem, and for his, id.
28. legem, *read* lege.
29. cuius, *read* cui suus (*Ulpian*); for est,
escit (*Ulpian*), and for familia,
familiam.
30. habeatur, *read* habeto (*Ulpian*); for
eamdem, eadem.

duodecim tabulaꝝ gentiles ad hereditatem uocant
 his uerbis signatus nescit gentiles familiā heres hanc
 nec gentilicia iura in usu sunt. KP DCCXXVIII
 ITEM ab intestato. Institutionum ab intestato quoque
 hereditas defertur. Aut p ius ciuile aut p pretoris bene 5
 ficiū p ius ciuile suis heredib³ uel liberis qui in potestate
 fuerunt filii filiꝝ et deinceps qui in locū defuncti paren
 tis qui ex eodem nati sunt succedunt, KP DCCXXVIII
 ITEM eodem libro post suos ab intestato legitime ad
 mittuntur, primū consanguinei sunt fratres et soror 10
 qui in eisdem potestatem patres fuerunt. et si ex diuer
 sis matribus nati sunt consanguineos et adoptio fa
 cit, et adrogatio causę pbatio. et in manu conuentio,
 KP DCCXXX, ITEM eodem libro et consanguineis legi
 timi uocantur hi sunt agnati qui nos p patris cognā 15
 tionem contingunt uiris sexus nam sciendū fēminis
 ultra consanguineis hereditates legitimas non de
 ferri suis pꝛetor solet et mancipatus liberos, itemq;
 ciuitatem donatus coniungere data bonorum
 possessiones. hi tamen ut bona sit qua pꝛpria habent 20
 his qui in potestate manserunt conferat, nam ꝑꝑꝑꝑꝑꝑ
 simum putauit neque eos bonis paternis carere p hoc
 qui non sunt in potestate, neque precipuā bonam
 pꝛpria habere cum partem sint ablaturis suis hoc
 redibus, KP DCCXXXI: ITEM LIBRO QUI SUPRA 25
 de suis heredibus post agnatos pretor uocat
 cognatos cognati aū sunt qui nos p patrem aut
 matrem contingunt post cognatos uirum et
 uxorem. et hec si qui decessit non fuit libertinus
 uel stirpis, libertineꝝ ceterum si libertinus est uel li 30

Line.

1. uocant, *read* uocat.
2. signatus, *read* si agnatus (*Pithou*); *for* nescit, nec escit, *and after* familiam *add* habento nunc nec ullus est (*M.*). *For* hanc *read* hinc.
4. Item, *read* idem. ab intestato institu
tionum, *read* [libro] institutionum.....
[subtitulo de successionibus] ab intestato.
7. *Before* filii. *M. inserts* qui sunt.
8. qui, *read* quia.
9. Item, *read* idem. legitime, *read* legitimi.
10. *Before* sunt *insert again* consanguinei
(*Lenel*); fratres, *read* frater.
11. eisdem, *read* eiusdem; *for* potestatem,
potestate; *for* patres, patris.
13. *After* adrogatio *insert* et; manu, *read*
manum.

Line.

14. item, *read* idem; et, *M. deletes and*
reads deficientibus.
16. uiris, *read* uirilis (*cf.* uirili, *W.*).
17. consanguineis, *read* consanguineas (*B^b*).
18. et mancipatus, *read* emancipatos.
19. ciuitatem donatus, *read* ciuitate donatus.
20. possessiones, *read* possessione; *for* hi
read ita; *for* sit, si.
21. conferat, *read* conferant.
23. qui, *read* quod (*Boecking*); precipuā,
read praecipua; *for* bonam, bona.
24. ablaturis, *read* ablaturi.
- 24 *and* 25. hoc redibus, *read* heredibus.
25. item *read* idem. *After* supra *add* sub
titulo (*V., W.*).

hinc pccatorum eius legitimam hereditas pccatorum
 ne legem duodecim tabularum referatur. hinc de
 Deum eodem libro post familiam pccatorum vocat pccator
 pccatorum & pccatorum. Idem liber os & pccatorum pccato
 rum & pccatorum. Deinde eum & pccatorum innox cognatus
 pccatorum & pccatorum: quod si his quid cessat libet opari.
 & pccatorum pccatorum nuncium sit legem duodecim
 tabularum manumissionis legitima hereditas de
 hinc pccatorum equitatis notis de pccatorum cognatorum
 pccatorum hinc pccatorum pccatorum filium filiam. aut
 aut. nepotem nepotem pccatorum sororem. nequis odan.
 sionem lussu sanguinis. necessitudinem nunciat. & sed impe
 rator noster in hereditatibusque ab intestato defe
 runtur. ex solas pccatorum voluit admitti. quibus de
 me immunitate ipse tribuit

e D . . .
 . . .
 . . .
 . . .

bertina patronum eius legitima hereditas patrona
 uę legem duodecim tabularum refertur. KP DCCXXX
 IDEM eodem libro post familiam patroni uocat pretor
 patronū et patronam. Idem liberos et parentes patro
 ni et patronę. deinde uirum et uxorem mox cognatus 5
 patroni et patronę quod si his qui decessit libero fuit
 ex remacipationē manumissus lex quidem duodecim
 tabularum manumissoris legitima hereditatem detu
 lit sed pretor equitate motus decē psonas cognatorum
 ei pretulit has patrem matrem filium filiam, auiū 10
 auiā, nepote neptem fratrem sororem ne quis occan
 sionem iuris sanguinis necessitudinem uinceret sed impe
 rator noster inhereditatibusque ab intestato defe
 runtur eas solas personas uoluit admitti, quibus deci
 mę immunitate ipse tribuit 15

Line.

1. patronum, *read* patrono.
- 1 and 2. patronaę, *read* patronaeue.
2. legem, *read* lege; *for* refertur, defertur.
4. idem, *M. reads* item, *Huschke retains*.
5. cognatus, *read* cognatos,
6. his = is; libero, *read* liber.

Line.

7. *Before ex M. inserts* nec: remacipa-
 tionē, n *wanting before c*; *read*,
 remancipatione.
8. manumissoris, *read* manumissori; legi-
 tima, *read* legitimam.
10. auiū, *read* auum.
11. nepote „ nepotem.
- 11 and 12. occansionem, *read* occasione.
15. immunitate, *read* immunitatem.

TEXT OF THE COLLATIO,
WITH
TRANSLATION AND NOTES.

(LEX DEI QVAM PRAECEPIT DOMINVS AD MOYSEN.)

LIBER PRIMVS

(TITVLVS I.)

DE SICARIIS (ET HOMICIDIS CASV VEL VOLVNTATE).

I. 1, 1 MOYSES dei sacerdos haec dicit :

Si quis percusserit hominem ferro et occiderit eum, mortem
2 moriatur. si autem manu lapide, quo mori possit, percusserit et
3 mortuus fuerit, homicida est: mortem moriatur. si autem per 10
inimicitiam inpulerit eum uel inmisit super eum aliquod uas ex
4 insidiis et mortuus fuerit, uel per iram percusserit eum manu et
mortuus fuerit, mortem moriatur.

I. 2, 1 Paulus quoque libro quinto sententiarum sub titulo ad legem
Corneliam de sicariis et ueneficis dicit :

Lex Cornelia poenam deportationis infligit ei, qui hominem
occiderit eiusque rei causa furtiue faciendi cum telo fuerit, et qui
uenenum hominis necandi causa habuerit uendiderit parauerit,
falsumue testimonium dixerit quo quis periret, mortisue causam
2 praestiterit. quae omnia facinora in honestiores poena capitis 20
uindicari placuit: humiliores uero aut in crucem tolluntur aut
bestiis subiciuntur.

I. 3, 1 Ulpianus Libro VII. de officio proconsulis sub titulo de sicariis
et ueneficis :

Capite primo legis Corneliae de sicariis cauetur, ut is 25
praetor iudexue quaestionis, cui sorte obuenerit quaestio de
sicariis eius quod in urbe Roma propiusue mille passus factum

c. 2, 1 = *Paulus* v. 23, 1. Cf. *Cicero pro Cluentio* 54, 148 : iubet lex (*Cornelia de sicariis*) . . . iudicem quaestionis . . . cum iis iudicibus qui ei obuenerint . . . quaerere de ueneno . . . quicumque fecerit uendiderit emerit habuerit dederit. quid eadem lex statim adiungit? . . . "deque eius capite quaerito" *cet.*

c. 2, 2. *Paulus* v. 23, 2 is restored from this passage.

Lines 1-2. Circular brackets indicate, throughout, words not in the assumed Archetype.

Line 7. *dei sacerdos*. In the Bible Moses is never styled Priest, but always Servant of God. His brother Aaron and his descendants were appointed priests. *Dei sacerdos* may be a pointed contrast to *Iuris sacerdos*—a term applied to the Roman Jurist.

Lines 8-13. Numb. xxxv. 16 : And if he smite him with an instrument of iron, *so that he die, he is a murderer*; the murderer shall surely be put to death.

17 : And if he smite him with throwing a stone, wherewith he may die, and he die, he is a murderer; the murderer shall surely be put to death.

18 : Or if he smite him with an *hand weapon of wood* wherewith he may die, and he die, he is a murderer; the murderer shall surely be put to death.

20 : But if he thrust him of hatred or hurl at him, by laying of wait that he die;

THE LAW OF GOD WHICH THE LORD ORDAINED UNTO MOSES.

FIRST BOOK

FIRST TITLE.

OF ASSASSINS AND MANSLAYERS, WHETHER BY ACCIDENT OR WILFULLY.

MOSES the Priest of God says thus :

If one smite a man with an implement of iron, and slay him, let him surely die.

Or if he smite him with the hand, with a stone, wherewith he may die, and he die, he is a manslayer ; let him surely die.

Or if in enmity he thrust at him or cast upon him some vessel from an ambush, and he die, or he smite him in anger with the hand and he die, let him surely die.

Paulus, also, in the Fifth Book of "The Sentences" under the Title "On the Lex Cornelia concerning Murderers and Poisoners," says :

The Lex Cornelia inflicts the punishment of deportation on one who has slain a human being ; was in possession of a weapon for that purpose or for that of committing a theft ; had sold, or procured, poison in order to kill a human being ; gave false testimony to compass another's death, or in any other way occasioned death. It is settled law that all such crimes, committed by persons of honourable standing, are visited with the capital penalty. Offenders of the lower orders are crucified or thrown to the wild beasts.

Ulpian, in his "Pro-Consular Functions," Book VII., under the Title "Of Assassins and Poisoners" :

In the First Chapter of the Lex Cornelia concerning Assassins, it is provided that the Praetor or investigating judge to whom the judicial inquiry *de sicariis* into acts committed at Rome or within a mile of the city has been assigned by lot, should,

PAGE 56, lines 8-13 (*cont.*). 21 : Or in enmity smite him with his hand that he die : he that smote him shall surely be put to death, for he is a murderer ; *the revenger of blood shall slay the murderer when he meeteth him*. The italicised passages are omitted or condensed in the Collatio.

Line 9. *manu lapide*. Huschke reads *manu lapideae*, "with the hand or with the stone." This is not in accordance with the Septuagint, nor with the original Hebrew. *Eben Yad*, which means a big stone, that is grasped with the hand. (Rashi *in loco*.)

Lines 16, etc. Chap. 2 recurs in Title viii., chap. 4, on False Testimony, which was an offence under this *Lex Cornelia*.

sit, uti quaerat cum iudicibus, qui ei ex lege sorte obuenerint de capite eius, qui cum telo ambulauerit hominis necandi furtiue faciendi causa, hominemue occiderit, cuiusue id dolo malo factum erit. et reliqua. -

I. 3, 2 Relatis uerbis legis modo ipse loquitur Ulpianus : 5

Haec lex non omnem, qui cum telo ambulauerit, punit, sed eum tantum, qui hominis necandi furtiue faciendi causa telum gerit, coercescit. conpescit item eum, qui hominem occidit, nec adiecit cuius condicionis hominem, ut et ad seruum et peregrinum pertinere haec lex uideatur. 10

I. 4, 1 Item Paulus libro qui supra, et titulo dicit :

Homicida est, qui aliquo genere teli hominem occidit mortisue causam praestitit.

DE CASVALIBVS HOMICIDIS.

I. 5, 1 Moyses legaliter dicit : 15

Si autem subito non per inimicitias inmisit super eum
2 aliquod uas non insidians uel lapidem, quo moriatur, non per
dolum et ceciderit super eum et mortuus fuerit, si autem non
3 inimicus eius fuerit neque quaesierit male facere ei, iudicabitur
inter eum, qui percussit, et proximum mortui secundum iudicia 20
4 haec, et liberabitur percussorem.

I. 6, 1 Ulpianus libro et titulo qui supra relati :

Distinctionem casus et uoluntatis in homicidio seruari
2 rescripto Hadriani confirmatur. uerba rescripti : 'Et qui ho-
minem occidit absolui solet, sed si non occidendi animo id 25
admisit : et qui non occidit, sed uoluit occidere, pro homicida
3 damnatur. e re itaque constituendum est : ecquo ferro percussit
Epafroditus ? nam si gladium instrinxit aut telo percussit, quid

c. 6, Marcian cites this Rescript, Digest. xlviii. 8, 1, 3.

Lines 16-21. Num. xxxv. 22-25 : "But if he thrust him suddenly without enmity, or have cast upon him anything without laying of wait, or with any stone wherewith a man may die, *seeing him not*, and cast it upon him, that he die, and was not his enemy, neither sought his harm : *then the congregation shall judge* between the slayer and the *revenger of blood*, according to these judgments : *and the congregation shall deliver the slayer out of the hand of the revenger of blood, and the congregation shall restore him to the city of his refuge, whither he has fled : and he shall abide in it unto the death of the High Priest, which was anointed with the holy oil.*" This law had long been obsolete. Since 70 c.e. the Jews had no criminal jurisdiction, and even before that date, as long as Palestine was under the Roman rule, they could not exercise it without the Procurator's consent. Hence, the compiler of the Collatio omits the references to the Avenger of Blood in this text as well as above in Num. xxxv. 21, and condenses the italicised passages.

together with the *indices* legally assigned him by lot, enquire into the status of anyone who has gone about with a weapon for the purpose of committing murder or theft, or has slain a man, or has wilfully caused this offence to be committed. *

Ulpian quotes the terms of the law, and then in his own words continues :

This law does not punish the bearing of arms as such, but only where weapons are carried with the object of murder or theft. It likewise punishes the perpetrator of a murder, and adds no qualification concerning his status ; hence, this law seems also to apply to a slave and a foreigner.

Paulus, in the Book and under the Title above quoted, says :

A homicide is one who has slain a man with any kind of weapon, or otherwise occasioned death.

CONCERNING ACCIDENTAL DEATHS.

Moses states the legal rule :

But if he cast a vessel upon one suddenly, not in enmity nor lying in wait,

Or a stone by which he may die, and it be not done wilfully, and it fall upon him and he die ; if, however, he had not been his enemy, nor sought to harm him ;

ye shall judge between him who smote and the next kinsman of the slain according to these judgments, and ye shall set the smiter free.

Ulpian, in the Book and under the Title above cited :

It is confirmed by a Rescript of Hadrian, that a distinction should be observed in homicide between accident and wilfulness.

Terms of the Rescript : One who has slain another is acquitted, provided that the deed was committed without intent to slay ; while a man who did not slay but intended to slay is condemned as a homicide. The point must be determined by the facts. With what instrument did Epafroditus strike the blow ? For if

dubium est, quin occidendi animo percusserit? si clauē percussit aut cucuma aut, cum forte rixaretur, ferro percussit, 4 sed non occidendi mente. ergo hoc exquirite et si uoluntas occidendi fuit, ut homicidam seruū supplicio summo iure iubete affici.'

5

I. 7, 1 Paulus libro et titulo qui supra :

Qui hominem occidit, aliquando absoluitur et qui non occidit, ut homicida damnatur : consilium enim uniuscuiusque, non factum puniendum est. ideoque si cum uellet occidere, casu aliquo perpetrare non potuit, ut homicida puniatur : et is, qui casu 10 2 [iactu] teli hominem imprudenter ferierit, absoluitur. quod si in rixa percussus homo perierit, quoniam ictus quoque ipsos contra unumquemque contemplari oportet, ideo humiliores in ludum aut in metallum damnantur, honestiores dimidia parte bonorum multati relegantur.

15

I. 8, 1 Item Gregorianus libro IIII. [sub titulo] ad legem Corneliam de sicariis et ueneficis talem constitutionem ponit :

Imperator Antoninus A. Aurelio Herculano et aliis militibus. Frater uester rectius fecerit, si se praesidi prouinciae optulerit : cui si probauerit non occidendi animo Iustam a se percussam 20 esse, remissa homicidii poena secundum disciplinam militarem sententiam proferet. Proposita prid. kal. Febr. Laeto bis cons.

p. C. 215

I. 9, 1 Item Gregorianus eodem titulo et libro talem constitutionem ponit :

Imp. Alexander A. Aurelio Flauio et aliis militibus. Si 25 modo pro quo libellum dedistis, non dolo praestitit mortem, minime perhorrescat : crimen quippe ita contrahitur, si et uoluntas occidendi intercedat. ceterum ea, quae ex improviso casu potius, quam fraude accidunt, fato plerumque, non noxae p. C. 222 inputantur. Prop. XIII. kal. Aug. Alexandro cons.

30

c. 7, 1 = Paulus v. 23, 3.

c. 8 = Cod. Inst. ix. 16, 1, which adds the words (lines 27—30): crimen—inputantur.

c. 9, crimen . . . inputantur in Cod. Inst. ix. 16, 1.

Line 4. *Supplicio summo*. Huschke has *supplicio crucis*. The *supplicium crucis*, though a common punishment among the Romans for slaves and the lower orders, was unknown among the Jews, whose modes of capital punishment were Stoning, Burning, Beheading and Strangling.

Line 11. [iactu]. Square brackets indicate, throughout, words omitted in the Codices and supplied by the Editors.

Lines 12, 13. *Quoniam ictus quoque ipsos contra unumquemque contemplari oportet*. Cf. Dig. xlviii. 8, l. 17, *Si in rixa percussus homo perierit, ictus uniuscuiusque in hoc collectorum contemplari oportet*.

Line 22. *Proferet*. Huschke reads *feret*, "He will receive sentence." Huschke argues that the reading *proferet*, "He shall pronounce sentence," would necessitate at the beginning of line 15 *qui si* instead of *cui si*,

he drew a sword or struck with any other lethal weapon, what doubt is there that he struck with intent to slay? If he struck with a key, a brazen pot, or an iron implement in a chance brawl, he struck with a weapon, but not with intent to kill.

Enquire, therefore, thoroughly into this point; and if there has been an intent to murder, sentence the slave to suffer the extreme penalty of the law as a homicide.

Paulus, in Book and Title as above :

A man who has slain another is sometimes acquitted, while one who has not slain is convicted as a homicide. In each and every case, the intent, and not the deed, is to be punished. Where, accordingly, one intended to kill and, through some chance, was unable to perpetrate the deed, he is punished as a homicide; but where one has killed a man unwittingly, by the chance throw of a weapon, he is acquitted.

Should, however, a man who has been struck in a brawl die, since it is our duty to take note of the actual blows given by each person, offenders of base degree are (in such cases) condemned to the gladiatorial contests or the mines, those of honourable rank forfeit half their property and are exiled.

The Gregorian Code, likewise, in the Fourth Book, under the Title, "On the Lex Cornelia concerning Assassins and Poisoners," gives the following constitution :

The Emperor Antoninus to Aurelius Herculanus and other soldiers: Your comrade would act more correctly if he gave himself up to the president of the province. If he satisfy him that he struck Justa with no murderous intent, the punishment for homicide will be remitted, and the President will pronounce sentence according to military regulations. Issued, the 31st of January, in the second consulship of Laetus.

The Gregorian Code, under the same Title and in the same Book, gives the following constitution :

The Emperor Alexander to Aurelius Flavius and other soldiers: If the party for whom you have forwarded a petition did not cause death wilfully, he need be under no apprehension, since a crime is only committed where the intent to kill enters into the deed. But acts which occur unexpectedly, by chance rather than of ill design, are generally ascribed to fate, and not counted to any one as guilt. Issued 20th July, in the consulship of Alexander.

MOSAICARUM ET ROMANARUM

I. 10, 1 Item Gregorianus eodem libro et titulo tale rescriptum dedit :

Exemplum s(acrarum) l(itterarum) dd. nn. Haue Agatho k(arissime) n(obis). Qualitas precum Iuli Antonini clementiam nostram facile commouit : quippe quod adseueret homicidium se non uoluntate, sed casu fortuito fecisse, cum calcis ictu mortis occasio praebita uideatur. quod si ita est neque super hoc ambigi poterit, omni eum metuac suspicione, quod ex admissae rei discrimine sustinet, secundum id quod adnotatione nostra comprehensum est, uolumus liberari. Dat. prid. k. Decemb. Diocletiano Aug. IIII.

p. C. 290 et Maximiano cons.

I. 11, 1 Ulpianus libro et titulo qui supra :

Cum quidam per lasciuiam causam mortis praeuisset, conprobatum est factum Taurini Egnati proconsulis Baeticae a diuo Hadriano, quod eum in quinquennium relegasset. uerba consultationis et rescripti ita se habent : 'Inter Claudium, optime imperator, et Euaristum cognoui, quod Claudius Lupi filius in conuiuio, dum sago iactatur, culpa Mari Euaristi ita male acceptus fuerit, ut post diem quintum moreretur. atque adparebat nullam inimicitiam cum Euaristo ei fuisse. tamen cupiditatis culpa coercendum credidi, ut ceteri eiusdem aetatis iuuenes emendarentur. ideoque Mario Euaristo urbe Italia prouincia Baetica in quinquennium interdixi et decreui, ut impendi causa duo milia patri eius persolueret Euaristus, quod manifesta eius fuerat paupertas.' V(erba) r(escripti) : 'Poenam Mari Euaristi recte, Taurine, moderatus es ad modum culpaе : refert enim et in maioribus delictis, consulto aliquid admittatur an casu.' et sane in omnibus criminibus distinctio haec poenam aut iustam prouocare debet aut temperamentum admittere.

I. 12, 1 Modestinus libro differentiarum sexto sub titulo de scientibus et ignorantibus generaliter loquitur :

Nonnumquam per ignorantiam delinquentibus iuris ciuilis uenia tribui solet, si modo rem facti quis, non iuris ignoret : quae scilicet consilio delinquentibus praestari non solet. propter quod

c. 10 = *Cod. Iust.* ix. 16, 5, *varied thus* : Eum qui adseuerat—uideatur, si hoc — poterit, omni metu, *cef.* c. 11 = *Dig.* xlviii. 8, 4, § 1.

c. 11, 3 refert et — 4 admittere = *Dig.* xlviii. 19, 5, § 2, *as if they were all the words of Ulpian.*

Line 2. *Haue Agatho K(arissime) n(obis).* For similar forms of address cp. Haenel, Preface to his Edition of the Theodosian Code, p. xxxix., footnote 239.

Line 13. *Baeticae.* Baetica was the ancient designation applied to Andalusia and part of Granada.

Line 14. *Relegasset.* Relegation is a prohibition against entering one's province, or Rome, or any particular district, either for life or for a limited term. *Dig.* xlviii. 22, 14. It may also mean restriction to an island or to any particular place (*lata fuga.*) (*Dig. ibid.* 22, 7; *ibid.*, 22, 5). It involved no forfeiture of property or loss of status (*Dig. Ibid.* 22, 4, and 22, 18).

LEGUM COLLATIO.

The Gregorian Code, in the Book and under the Title already quoted, has likewise given the following Rescript :

Copy of an Imperial Letter. "The Emperor's greetings to our well-beloved Agatho. The character of the petition of Julius Antoninus readily appealed to our clemency. For he urges that he committed the homicide not wilfully, but by pure accident, the death having apparently been caused by a kick of the heel. If this is so, beyond the possibility of a doubt, we desire that he be relieved, in accordance with the contents of our note, of all the fear and apprehension under which he labours owing to the grave character of his act." Issued 30th November, in the fourth year of the Emperor Diocletian, and in the Consulship of Maximian.

Ulpian, in the Book and under the Title above cited :

A certain man having, in a frolic, caused another's death, Taurinus Egnatius, Pro-Consul of Baetica, sentenced him to five years' exile. The sentence was approved by the Emperor Hadrian.

The terms of the case remitted to the Emperor, and of the latter's Rescript, are as follows : "Your Imperial Majesty, I had before me the following case of Claudius and Evaristus. Claudius, the son of Lupus, while being tossed in a cloak at a banquet, was, through Marius Evaristus' fault, so roughly handled that, five days after, he died. It was clear that there was no ill-will between him and Evaristus. Nevertheless, I thought that recklessness should be checked, so that other young men of the same age might mend their ways. I therefore banished him for five years from Rome, Italy, and the province of Baetica, and ordered him to pay 200 sester tia as costs to the deceased youth's father, whose poverty was manifest."

The terms of the Rescript: "You have acted rightly, Taurinus, in mitigating the penalty (and adjusting it) to the character of the offence; for even in the more serious classes of delicts, it is of moment whether a thing was done designedly or by accident, and in all crimes this difference will necessarily require the infliction of the full penalty or permit of a mitigation."

Modestinus, in the Sixth Book of "Distinctions," under the Title "Of Those who Act Willingly or in Ignorance," says in general terms :

Those who have committed offences in ignorance are sometimes pardoned by the civil law, provided the ignorance was of

necessarium est addita distinctione considerare, utrum sciente an ignorante aliquo quid gestum proponatur. et reliqua.

I. 13, 1 Paulus libro et titulo qui supra :

Qui telum tutandae salutis causa gerit, non uidetur hominis
2 occidendi causa portare. teli autem appellatione non tantum 5
ferrum continetur, sed omne, quod nocendi causa portatum est.

(TITVLVS II.)

DE ATROCI INIVRIA.

II. 1, 1 Moyses dicit:

Si autem contenderint duo uiri et percusserit alter alterum 10
lapide aut pugno et non fuerit mortuus, decubuerit autem in
2 lectulo, et si surgens ambulauerit homo foris in baculo, sine
crimine erit ille, qui eum percusserat praeter ac cessationis eius
mercedem dabit ei et medico inpensas curationis.

II. 2, 1 Ulpianus libro singulari regularum sub titulo de iniuriis: 15

Iniuria, si quidem atrox, id est grauis, non est, sine iudicis
arbitrio aestimatur. atrocem autem aestimare solere praetorem
idque colligi ex facto, ut puta si uerberatus uel uulneratus quis
fuerit. et reliqua.

II. 3, 1 Papinianus libro definitionum secundo sub titulo de iudi- 20
catis :

Per hominem liberum noxae deditum si tantum adquisi-
tum sit, quantum damni dedit, manumittere cogendus est a
praetore qui noxae deditum accepit: sed fiduciae iudicio non
tenetur.

25.

c. 13, 1 = *Dig.* xlviii. 6, 11, § 2. *Paul.* v. 23, 7 is restored from this passage.

c. 13, 2. *Paul.* v. 23, 7 is restored from this passage.

Lines 10-14. *Exod.* xxi. 18-19: "And if men strive together and one smite another with a stone or with his fist, and he die not, but keepeth *his* bed" [the Latin of the *Collatio*, *decubuerit*, is nearer to the Hebrew, which means "and fall on his bed"]; "If he rise again and walk abroad upon his staff, then shall he that smote him be quit; only he shall pay for the loss of his time and shall cause him to be thoroughly healed."

Line 12. *Foris*. The reading *fortis* in all the MSS. may point to the Rabbinical exegesis which interprets the phrase על משענתו, usually translated "on his staff" as meaning "in sound health and strength." If so, the author of the *Collatio*, by giving, according to the MSS., *fortis in baculo*, has combined the two opposite renderings of the same Hebrew phrase, and omitted to translate the word בחיץ.

Line 14. *Et medico inpensas curationis*. So Targum of Onkelos, ואמר אסיה ישלם "He shall pay the doctor's fee." The assailant is not to give the injured man a sum of money for treatment which the sufferer may expend for any purpose he pleases. He is only liable for the costs of medical advice and treatment actually incurred. (*Nachmanides in loco*.)

LEGUM COLLATIO.

the fact and not of the law. For pardon is naturally not extended to such as offend intentionally. It is therefore essential, bearing this distinction in mind, to consider whether an act is stated to have been done knowingly or unwittingly, etc.

Paulus, in the Book and under the Title above cited :

Whosoever carries arms for self-protection is not regarded as carrying them for the purpose of committing homicide.

The term weapon (*telum*) denotes not merely an implement of steel, but anything carried for the purpose of causing injury.

SECOND TITLE.

CONCERNING OUTRAGE.

Moses says :

If two men strive together and one strike the other with a stone or with the fist, and he die not but take to his bed ;

And if the man arise and go about abroad on a staff, he who hath struck him shall be guiltless, except that he shall recompense him for his enforced idleness, and pay the physician the cost of healing.

Ulpian, in his Single Book of Rules, under the Title "Of Injuries" :

An injury, if it is not outrageous, that is, of an aggravated character, is assessed for damages without recourse to the *judex* for decision. Where it is of an outrageous character, the Praetor usually assesses the damages. This is gathered from the facts of the case, as, for example, when a man has been beaten or wounded.

Papinian, in the Second Book of the Definitions, under the Title "Of Those Adjudged" :

If a free man, surrendered in a noxal action, in satisfaction of judgment, acquired for his master the equivalent of the damages he caused, the master who accepted him in noxal surrender is to be compelled by the Praetor to release him, but is not liable in a fiduciary action.

PAGE 64, lines 16-17. *Sine iudicis arbitrio*. Does this refer to the Praetor? In cases of ordinary *iniuria*, the Praetor allows the sufferer to claim a specific sum; and the judge condemns the wrong-doer to pay any sum not exceeding this, to be fixed at his discretion. (Gaius iii. 224 ; Just. Inst. iv. 4, 7.)

Lines 22-25. Cp. Gaius iv. 75-81.

Lines 24-25. *Sed fiduciae iudicio non tenetur*. The surrender of the free man had not been in *fiducia* (as e.g. in the mancipation by a father of a son with a condition of remancipation, Gaius i. 140), and consequently there can be no fiduciary action. Whether a noxal surrender by a father of a son was analogous to a mancipation was disputed. (Gaius iv. 79.)

11. 4, 1 Ulpianus libro XVIII. ad edictum sub titulo si fatebitur iniuria occisum esse, in simplum et cum diceret :

Rupisse eum utique accipiemus, qui uulnerauerit, uel uirgis uel loris uel pugnibus caedit, uel telo quouque alio uis genere sciderit hominis corpus uel tumorem fecerit : sed ita demum, si damnum datum est. ceterum si in nullo seruum pretio uiliorem deterior-
emue fecerit, Aquilia cessat iniuriarumque erit agendum. ergo et
si pretio quidem non sit deterior factus seruus, uerum sumptus
in salutem eius et sanitatem facti sunt, in haec nec mihi uideri
damni Aquilia lege [agi] posse.

11. 5, 1 Paulus libro singulari et titulo de iniuriis :

Generaliter dicitur iniuria omne, quod non iure fit : specialiter alia est contumelia, quam Graeci [$\psi\beta\rho\iota\nu$] appellant, alia culpa, quam Graeci $\alpha\delta\iota\kappa\eta\mu\alpha$ dicunt, sicut in lege Aquilia damnum iniuriae accipitur, alia iniquitas et iniustitia, quam Graeci [$\alpha\delta\iota\kappa\iota\alpha$] uocant. nam cum praetor non iure aduersum nos pronuntiat, iniuriam nos accepisse dicimus : unde apparet non esse uerum, quod Labeo putabat, apud praetorem iniuriam [$\psi\beta\rho\iota\nu$] dumtaxat
significare. commune omnibus iniuriis est, quod semper aduersus
bonos mores fit idque non fieri alicuius interest. hoc edictum ad
eam iniuriam pertinet, quae contumeliae causa fit. fit autem iniuria uel in corpore, dum caedimur, uel uerbis, dum conuicium patimur, uel cum dignitas laeditur, ut cum matronae uel
praetextatae comites abducuntur. iniuriarum actio aut legitima

c. 4 = Dig. ix, 2, 27, 17.

Line 2. *Et cum diceret.* So the MSS. (B.V.); *et cum dicere* (W.). The superscription (Lines 1 and 2) with the different ending in the MSS. *cum doceret* (B.W.), *cum docere* (V.), recurs xii. 7, 1. Huschke conjectures *ut condiceret*; and the meaning of the passage would be, if the defendant admits that the plaintiff's slave or quadruped had been unlawfully slain by him, the plaintiff should claim simple damages. *Ut condiceret* would be the conclusion of the terms in the edict on which Ulpian comments. Lenel (*Zeitschrift der Savigny-Stiftung Röm. Abteilung*, viii. 195) has rejected this reading. Mommsen explains *et cum diceret* to mean "Ulpian also says." This is not convincing.

Lines 5 and 6, *Si damnum datum est*, that is material loss, deterioration of value.

Line 7. *Aquila cessat.* The terms of the first clause of the *Lex Aquilia* are preserved in the Digest (ix. 2, 1, 2). *Qui seruum seruamue alienum alienamue, quadrupedemue pecudum iniuria occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto.* The third clause made provision for other damage (Gaius iii., 217). The *Lex Aquilia*, when the facts were traversed, gave double damages (Gaius iii. 216).

Line 11. *Singulari et.* Huschke suggests in his notes that the passage here and also further on (ii. 6, 1), ought to be V. Regular Sub, "In the fifth book of Rules, under the title *de iniuriis*." His grounds are that, while all the books mentioned in the *Collatio* are cited elsewhere, we have no reference in any other work to a book *de iniuriis* by Paulus; and that the very passage here quoted occurs in Paulus, Rules, v. 4 at the beginning.

Ulpian, in the Eighteenth Book on the Edict, under the Title

"In confessions of wrongful slaying, simple damages are claimed," and where he says:

We shall regard as "breaking" all cases of wounding, beating with rods, thongs or fists; cutting another's body with a weapon or any other implement, or causing a swelling; but only when damage has been caused. But if the value of the slave has in no wise been diminished, an Aquilian action does not lie; the action which will apply will be one for outrage. On this principle, where there has been no deterioration in the value of the slave, but expenses have been incurred in order to restore him to sound health, an Aquilian action for damages cannot, in my opinion, be brought.

Paulus, in his Single Book, and under the Title "Of Injuries":

The term *Iniuria* denotes generally anything done unlawfully. Specifically it may either mean insult, called by the Greeks ὕβρις; fault, which the Greeks call ἀδίκημα, and which is the sense in which the phrase *damnum iniuriæ* in the Lex Aquilia is taken; or iniquity and injustice, which the Greeks term ἀδικία; for when the Praetor decides against us, not according to the law, we say that we have suffered an injury. Hence it is clear that Labeo is incorrect in his view that the term *iniuria*, when used by the Praetor, is exclusively restricted to insult. A common element of all injuries is that they always offend against morality, and that it is to someone's interest that they should not occur. This Edict applies to that particular class of injury which is in the nature of insult.

We are injured either in body when we are beaten, or by words when we suffer abuse, or when honour is wounded, as when a lady's companions or those of a girl are abducted.

An action for outrage is statutory or praetorian. A statutory

PAGE 66, line 13. *Alia culpa*. Poste, in his edition of Gaius, p. 15, has a different classification. "Negligent violation of the Law (*culpa*, ἀμαρτία) is distinguished on the one side from misadventure (*casus*, ἀτύχημα), and, on the other, from intentional violation of the Law (*dolus*, ἀδίκημα), which again is distinguished from deliberate violation of the Law (ἀδικία)."

Line 22. *Urbis*. Huschke has *auribus*. This emendation makes the passage more symmetrical: an outrage to the body by an assault, to the sense of hearing by a shout, and to the sentiment of honour by abduction of companions. According to the text, *urbis* should have as its parallel in the first clause *corpore*, instead of *in corpore*. In support of his view, that the classification of Paulus follows the nature of the injury and not the mode of its infliction, Huschke quotes Auct. ad Her. 4, 25: "*Iniuriæ sunt, quæ aut pulsatione corpus aut comicio aures, aut aliqua turpitudine uitam alicuius uiolant.*"

est aut honoraria. legitima ex lege duodecim tabularum: 'qui iniuriam alteri facit, quinque et uiginti sestertiorum poenam subito.' quae lex generalis fuit: fuerunt et speciales, uelut illa: 'si os fregit libero, CCC [si] seruo, CL poenam subito sestertiorum.'

II. 6, 1 Idem Paulus eodem libro singulari sub titulo quemadmodum iniuriarum agatur:

'Qui autem iniuriarum,' inquit, 'agit, certum dicat, quid iniuriae factum sit et taxationem ponat non minorem quam
2 quanti uadimonium fuerit.' certum dicit, qui suo nomine 10 demonstrat iniuriam, neque ita, ut per disiunctionem hoc aut illud accidisse comprehendat, sed ut necesse habeat aut unam nomine suo rem designare aut plures ita conplecti, ut omnes eas accidisse
3 cogatur probare. certum autem an incertum dicat, cognitio ipsius praetoris est. demonstrat autem hoc loco praetor non uocem 15
4 agentis, sed qualem formulam edat. certum non dicit, qui dicit pulsatum se siue uerberatum. sed et partem corporis demonstrat et quem in modum, pugno puta an fuste an lapide, sicut formula proposita est: 'quod Auli Ageri mala pugno percussa est.' illud non cogitur dicere, dextra an sinistra, nec qua manu percussa sit. 20
5 item si dicat infamatum se esse, debet adicere, quemadmodum infamatus sit. sic enim et formula concepta est: 'quod Numerius Negidius libellum misit Aulo Agerio infamandi causa.'

II. 7, 1 Paulus libro sententiarum [quinto] sub titulo ad legem Corneliam de sicariis et ueneficis:

Causa mortis idonea non uidetur, cum caesus homo post aliquot dies officium diurnae uitae retinens decessit nisi forte fuerit ad necem caesus aut letaliter uulneratus.

c. 7. Paulus v. 23, 5 is restored from this passage.

Line 6. *Eodem libro singulari.* See above, note on page 66, line 11.

Line 9. *Non minorem.* Otherwise he would not be able to claim a larger amount from the defendant, or on his failure to pay, from the security (Gaius iv. 57). Huschke's reading is *non maiorem*. Though condemned by Mommsen, it seems more reasonable. If the plaintiff claimed more and was awarded less than the amount fixed by the praetor as *uadimonium*, he might in an action against the security be non-suited on the ground of *plus petitio*.

Lines 24-28. The closing paragraph belongs, according to Huschke, to Title i., but as the distinction it expresses is also found in the Biblical text at the beginning of Title iii., it was placed by an unthinking scribe after that text whence it was transferred to its present position. It may be urged with equal plausibility that the right place of this paragraph is at the beginning of Title ii., but was placed at the end of the title owing to the analogy with the succeeding Biblical text in the next title.

action is based on the following law of the XII Tables: "He who hath done wrong to another, let him suffer a penalty of twenty-five sesterces." This was a general law. There were also specific laws such as the following: "If one hath broken a limb of a free man, let him suffer a penalty of three hundred sesterces; if of a slave, one hundred and fifty sesterces."

The same Paulus, in the same Single Book, under the Title of "Procedure in Actions for Outrage":

The plaintiff in an action for outrage must state exactly the nature of the outrage committed, and must set down as damages a sum not less than the amount of the security.

An exact statement is where the plaintiff indicates the injury by its proper name; not so, however, when he uses a term which implies alternatively that either this or that happened to him; but it is essential that he should designate each thing by its proper name; or if he includes several things in one designation, he will be under the necessity of proving that they all happened. It lies within the Praetor's jurisdiction to determine whether the statement is exact or not. At this stage, however, the Praetor does not set forth the plaintiff's case, but merely settles the formula he will issue.

It is not an exact statement to say that he has been beaten or thrashed, but he must also indicate which part of the body was struck, and in what way; whether, for example, with the fist, a cudgel or a stone, as is set forth in the formula: "Whereas Aulus Agerius (the plaintiff) was struck on the cheek by Numerius Negidius (the defendant) with the fist." He is not, however, bound to state on which cheek, whether on the right or left, nor with which hand he was struck.

Again, if he asserts that his character has been defamed, he must add in what way it was defamed, for the formula too is thus framed: "As Numerius Negidius (defendant) sent a lampoon to Aulus Agerius (plaintiff) with the intent to defame him."

Paulus, in the Fifth Book of "The Sentences," under the Title "On the Cornelian Law concerning Assassins and Poisoners":

It is not regarded as a direct cause of death when a person who has been assaulted dies after the lapse of some days, during which he has carried on his daily occupation, except where one was beaten to death or mortally wounded.

Page 68, lines 27-28. *nisi forte fuerit ad necem caesus aut letaliter vulneratus.* In such a case the wounding would be considered the cause of death, although the victim lingered for some time.

MOSAICARUM ET ROMANARUM

(TITVLVS III.)

DE IVRE ET SAEVITIA DOMINORVM.

III. 1, 1 Moyses dicit:

Si quis percusserit seruum aut ancillam uirga et mortuus
2 fuerit in manibus eius, iudicio uindictetur. quod si superuixerit 5
die uno aut duobus, non uindicabitur, pretium enim ipsius est.

III. 2, 1 Paulus libro sententiarum [quinto] sub titulo ad legem Corne-
liam de sicariis et ueneficis dicit:

Seruus si plagis defecerit, nisi id dolo fiat, dominus homi-
cidii reus non potest postulari: modum enim castigandi et in 10
seruorum coercitione placuit temperari.

III. 3, 1 Ulpianus libro octauo de officio proconsulis sub titulo de domi-
norum saeuitia:

Si dominus in seruum saeuierit uel ad inpudicitiam turpen-
que uiolationem compellat, quae sint partes praesidis, ex rescripto 15
diui Pii ad Aurelium Marcianum proconsulem Baeticae manifes-
2 tatur. cuius rescripti uerba haec sunt: Dominorum quidem
potestatem in suos seruos inlibatam esse oportet nec cuiquam
hominum ius suum detrahi: sed dominorum interest, ne auxilium
contra saeuitiam uel famen uel intolerabilem iniuriam denegetur 20
3 his, qui iuste deprecantur. ideoque cognosce de querellis eorum,
qui ex familia Iuli Sabini ad statuam confugerunt, et si uel durius
habitos, quam aequum est, uel infami iniuria adfectos cognoueris,
uenire iube, ita ut in potestatem Sabini non reuertantur. quod si
meae constitutioni fraudem fecerit, sciet me admissum seuerius 25
4 executurum. diuus etiam Hadrianus Umbram quandam matro-

c. 2. Paulus v., 23, 6 is restored from this passage.

c. 3 = Dig. i., 6, 2.

Lines 4-6. Exod. xxi. 20, 21: "And if a man smite his servant or his maid with a rod, and he die under his hand, he shall be surely punished. Notwithstanding, if he continue a day or two he shall not be punished, for he is his money."

Line 5. *Uindictetur* is nearer to the Hebrew, נָקָם יִנָּקֶם "Let him surely be avenged," than the rendering in the Authorised Version, "Let him be punished."

Line 10. *Enim*. The connection between the two sentences by the word *enim* is difficult. Hence Cramer's emendation *et si*, that is to say, even though masters must exercise moderation in the chastisement of their slaves, still where there was no intent to kill, the punishment of slaves, resulting in death, is not murder. Huschke suggests *tamen*; "nevertheless the punishment of slaves should be moderate." Mommsen thinks that after *temperari* some such words as the following have dropped out: *sed tamen etsi eum dominus excessit homicidium non commisit*.

Line 23. *Infami*. According to the Berlin Codex *infamiae*; the sense is "have been starved."

LEGUM COLLATIO.

THIRD TITLE.

OF THE LEGAL POWER AND CRUELTY OF MASTERS.

Moses says :

If anyone smite his manservant or his maidservant with a rod and he die under his hand, let him be avenged by process of law ; but if the slave survive for one or two days, he shall not be avenged, for he is his master's money.

Paulus, in the Fifth Book of "The Sentences," under the Title "Of the Lex Cornelia concerning Assassins and Poisoners," says :

If a slave die of a scourging, the master cannot be charged with murder, unless there was an intent to kill ; for it is settled that, even in the correction of slaves, the measure of punishment must be kept within bounds.

Ulpian, in the Eighth Book of "The Proconsular Functions," under the Title "Of the Cruelty of Masters" :

Where a master has behaved with cruelty to his slave, or forces him into a life of shame and vice, the duty of the Provincial President is clearly set forth in the Rescript of the late Emperor Antoninus Pius to Aurelius Marcian, Proconsul of Baetica.

The terms of the Rescript are as follows : The power of masters over their slaves ought to remain unimpaired, nor should any man's rights be taken from him ; but it is in the interest of the masters that relief from cruelty, hunger, or intolerable outrage should not be refused to those who justly cry out.

Take cognisance, therefore, of the complaints of those members of Julius Sabinus' household who have fled for protection to the statue (*i.e.* of the Emperor). And if you will find that they have been treated with undue harshness or subjected to an infamous outrage, order them to be sold with the stipulation that they are never to return into Sabinus' power. If he evades this my ordinance, he will learn that I shall deal more severely with the offence.

The late Emperor Hadrian sentenced a certain lady called Umbra to five years' relegation because she had, for trivial reasons, treated her maids with great brutality.

MOSAICARUM ET ROMANARUM

- nam in quinquennium relegauit, quod ex leuissimis causis ancillas
 III. 3, 5 atrocissime tractaret. item diuus Pius ad libellum Alfi Iuli
 rescripsit [in] haec uerba: 'Seruorum obsequium non solum im-
 perio, sed et moderatione et sufficientibus praebitis et iustis
 6 operibus contineri oportet. itaque et ipse curare debes iuste ac 5
 temperate tuos tractare, ut ex facili requirere eos possis, ne, si
 apparuerit uel inparem te inpendiis esse uel atrociore domina-
 tionem saeuitia exercere, necesse habeat proconsul u. c., ne quid
 tumultuosius contra accidat, praeuenire et ex mea iam auctoritate
 a. 152 [te] ad alienandos eos compellere. Glabrione et Homullo cons.' 10
 III. 4, 1 Gregorianus libro XVIII. sub titulo de accusationibus:
 Impp. Diocletianus et Maximianus Augusti Aurelio Sacrato
 militi. Cum seruum tuum [ui] aegritudinis grauitur oppressum
 fati munus implere proponas, propter inmoderatam castiga-
 tionem calumniae accusationem emergere innocentiae ratio, cuius 15
 a. 285 fiduciam geris, non permittit. Prop. non. Decemb. Diocletiano
 A. III. et Aristobulo cons.

(TITVLVS III.)

DE ADVLTERIIS.

- IV. 1, 1 Moyses dixit: 20
 Quicumque moechatus fuerit mulierem proximi sui, mortem
 2 moriatur qui moechatus fuerit et quae moechata fuerit. quod si
 aliqui seduxerit uirginem non desponsatam et stuprauerit eam,
 3 dotabit eam sibi in uxorem. quod si rennuerit pater eius et
 noluerit eam dare illi uxorem, pecuniam inferet patri, in quantum 25
 est dos uirginis.
 IV. 2, 1 Paulus libro singulari de adulteris sub titulo:
 Breuem interpretationem [Iegis Iuliae] de adulteris coercen-
 dis facturus per ipsa capita ire malui ordinemque legis seruare.
 2 et quidem primum caput legis (Iuliae de adulteris) prioribus 30

Lines 21-26. Lev. xx. 10: "And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death."

Exod. xxii. 16, 17: "And if a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife. If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins."

Line 27. *libro singulari*, etc. Blume suggests *libro singulari et titulo de adulteriis*. Huschke suggests *initio* instead of *titulo*, and also thinks that in chaps. 3, 4, and 6, the copyist thoughtlessly repeated the error *et titulo*.

LEGUM COLLATIO.

The late Emperor Antoninus Pius likewise sent a Rescript in the following terms in reply to an enquiry from Alfius Julius : The obedience of slaves must be maintained not merely by the exercise of authority, but by reasonable treatment satisfaction of their necessities, and a fair apportionment of tasks.

You should, on your part, therefore, take care to treat your slaves fairly and with moderation, so that you may without difficulty be able to claim them back. Otherwise, on its appearing that their maintenance is beyond your resources, or that you exercise authority with revolting cruelty, the Proconsul may be under the necessity of preventing the mischief of a possible outbreak by forcing you, with my sanction, to part with your slaves. In the Consulship of Glabrio and Omullus.

The Gregorian Constitution, Book XVIII., under the Title "Of Accusations."

The Emperors Diocletian and Maximian to the soldier Aurelius Sacratu : Since you set forth that your slave died a natural death as the result of a severe illness, regard for your innocence, for which you pledge your faith, forbids that a prosecution for malice on account of excessive punishment should be entertained. Issued 5th December, in the Third Year of the Emperor Diocletian and in the Consulship of Aristobulus.

FOURTH TITLE.

OF ADULTERIES.

Moses said :

Whoever committeth adultery with his neighbour's wife, let him surely die, he that committeth adultery and the adulteress.

If anyone seduce a virgin who is not betrothed and defile her, he shall endow her to be his wife.

If her father refuse, and will not give her to him for a wife, he shall pay money to the father according to the dowry of the virgin.

Paulus, in his Single Book of "Adulteries," under the Title :

In writing a short commentary on the Lex Julia concerning the punishment of adulterers, I preferred to go through the chapters themselves, and to follow the order of the Statute.

The first chapter of the Statute repeals several earlier enactments.

IV. 2, 3 legibus pluribus obrogat. secundo uero capite permittit patri,
[si in] filia sua, quam in potestate habet, aut in ea, quae [eo]
auctore, cum in potestate esset, uiro in manum conuenerit, adul-
terum domi suae generiue sui deprehenderit isue in eam rem
socerum adhibuerit, ut is pater eum adulterum sine fraude occidat, 5
4 ita ut filiam in continenti occidat. in sui iuris autem filia qui
adulterum deprehensum occiderit et in continenti filiam, licito
iure hoc factum Marcellus libro XXXI. digestorum scribit.
5 auctoritate quoque [legis] patrem posse interficere uel consularem
uirum uel patronum suum, [si eum] in filia adulterum deprehen- 10
6 derit, eodem libro Marcellus probat. sed si filiam non inter-
7 fecerit, sed solum adulterum, homicidii reus est. et si interuallo
filiam interfecerit, tantundem est, nisi persecutus illam interfecerit:
continuatio enim animi uidetur legis auctoritate fecisse.

IV. 3, 1 Idem Paulus eodem singulari libro et titulo: 15

Certae autem enumerantur personae, quas uiro liceat occi-
dere in adulterio deprehensa uxore, quamuis uxorem non liceat.
2 ergo secundum leges uiro etiam filiofamilias permittitur domi
suae deprehensum adulterum interficere seruum, et eum qui
auctoramento rogatus est ad gladium, uel etiam illum qui operas 20
3 suas, ut cum bestiis pugnaret, locauit. sed et iudicio publico
damnatum licet interficere in adulterio deprehensum, uel liberti-
num uel suum uel paternum, et tam ciuem Romanum quam
4 Latinum. sed et patris et matris et filii et filiae libertum per-
5 mittitur occidere, quo loco et dediticius habetur. debet autem 25

Lines 7 and 8. *Licito iure*. Huschke supplies *non* before *licito iure*; Cujas suggests *illicito iure*. Both emendations are on the ground that the daughter in this case is *sui iuris*. Cp. Digest xlviii. 5, l. 20, *Patri datur ius occidendi adulterum cum filia quem in potestate habet*. But this is Papinian's view, from which Marcellus may have differed.

Line 9. *auctoritate quoque [legis] patrem*; Huschke reads *at de auctoritate queni- que patrem*: "And as regards the adulterer's rank, the father may kill," etc. Cp. below in this title, chap. 12, § 1, *Cuiusque dignitatis*; for the law, cp. Digest xlviii. 5, l. 24, *pr.*, and § 3; also *ibid.*, l. 38, § 9.

Line 13. *Nisi persecutus illam interfecerit*: Cp. below in this title, chap. 9; *plane si filia non uoluntate patris, sed casu seruata est*, etc. Also Digest xlviii. 5, l. 23., § 4; *ibid.*, l. 32, *pr.*

Line 15. *et titulo*. See note to page 72, line 27.

Line 18. *Secundum leges*. Huschke suggests *secundum legis (uerba)*, "according to the terms of the statute." Cp. *Zeitschr. für R.W.*, xiii., p. 34; and below in this title chap. 12, § 2, *uerbis quidem legis prope est*.

Lines 18-19. *Domi suae deprehensum*; but the husband has not the right of killing the adulterer if he finds him in the house of his father-in-law. Digest xlviii. 5, l. 24, *pr.*, *non etiam socii*.

Line 21. *cum bestiis pugnaret locauit*. Huschke thinks that here probably the following passage has dropped out: *quiue leno fuit, quiue artem ludicram ante fecit, inue scenam saltandi cantandiue causa prodiit* (Digest xlviii. 5, l. 24, *pr.*).

The second chapter enacts that if a father, either at his own house or at that of his son-in-law who has applied to him in the matter, has caught anyone committing adultery with his daughter, she being at the time in his power or having passed, with his sanction, out of his power into that of her husband, he is permitted to slay the adulterer without risk of prosecution, provided that he slays the daughter immediately.

If a father kills a man taken in adultery with his daughter, who is *sui iuris*, and kills his daughter at the same time, Marcellus, in the Thirty-first Book of his "Digest," writes that the act is lawful.

Marcellus, in the same Book, shows that a father has also the sanction of the law to kill a man of consular rank or his own patron, should he take him in adultery with his daughter.

But if he does not kill the daughter but only the adulterer, he is guilty of murder.

And the law is the same if he kill the daughter after an interval, unless he pursue her and kill her; for where the father had a continuing intention, he is regarded as having acted with legal sanction.

The same Paulus, in the same Single Book and Title :

Certain classes of persons are enumerated whom the husband may kill when the wife is taken in adultery (with any of them), though he may not kill her.

Thus the husband, even if he is a *filius familias*, is permitted, according to the Statutes, to kill a man whom he has taken in adultery in his house, if the adulterer is a slave, a paid gladiator, or one who has let out his services to fight with wild beasts, or has been convicted on a criminal charge, or is a freedman, whether his own or his father's, and whether a Roman or a Latin citizen.

Moreover, he is permitted to kill the freedman of his father, mother, son or daughter; and this class also includes a freedman with the status of an enemy surrendered at discretion.

PAGE 74, line 22. *Libertinum* : Huschke has instead *libertum uxoris*. The meaning of the whole passage would be, "his wife's or his freedman, or the freedman of either his or her father."

Line 25. *Quo loco et dediticius habetur*. The *dediticius* was created by the *Lex Aelia Sentia*, passed in the year 4 c.e., and could not have been mentioned in the *Lex Julia*, the date of which is 18 b.c. But the *dediticius* was a *quasi-Romanus* or a *quasi-Latinus civis*. Hence the phrase *quo loco et dediticius habetur*. Huschke would place this passage at the end of § 3.

- profiteri apud eum, cuius iurisdictio est eo loco, ubi occidit, et uxorem dimittere. quod si non fecerit, impune non interficit.
- IV 3, 6 sciendum est autem diuum Marcum et Commodum rescripsisse eum qui adulterum inlicite interfecerit, leuiori poena puniri. sed et Magnus Antoninus pepercit, si qui adulteros inconsulto calore ducti interfecerunt. et reliqua. 5
- IV. 4, 1 Idem Paulus eodem libro singulari et titulo :
Iure mariti uel patris qui accusat, potest et sine calumniae poena uinci: si iure extranei accusat, potest calumniae poena 2 puniri. sed tum post duos menses intra quattuor menses utiles expertus, licet talis sit, qui alias accusare non possit, ut libertinus aut minor uiginti quinque annorum aut infamis, tamen ad accusationem admittitur, ut et Papinianus libro XV. scripsit. 10
- IV. 5, 1 Papinianus libro XV responsorum sub titulo ad legem Iuliam de adulteris : 15
Cuius Romanus, qui [ciuem Romanam] sine conubio siue peregrinam in matrimonio habuit, iure quidem mariti eam adulteram non postulat, sed ei non opponetur infamia uel quod libertinus rem sestertiorum triginta milium aut filium non habuit, propriam iniuriam persequenti. 20
- IV. 6, 1 Paulus libro singulari et titulo qui supra :
In uxorem adulterium uindicatur iure mariti, non etiam sponsam. Seuerus quoque et Antoninus ita rescripserunt.

Line 1. *Profiteri*: after this word Huschke supplies (*rem*). Cp. the phrase *testandae eius rei causa* (*Digest* xlviii. 5, l. 25, *pr.*). The passage below in this title, chap. 12, § 5, *utque.....profiteri*, is against him.

Line 3. *Marcum et Commodum rescripsisse*. Reference to *Digest* xlviii. 5, l. 38, § 8, shows that the Rescript refers to an adulteress, unless we read in that passage *uxoris in adulterio deprehensum*, instead of *uxorem in adulterio deprehensam*.

Line 5. *Magnus Antoninus, i.e., Caracalla*, to whom are to be ascribed the Rescript, Just. Code, ix. 9, 3, *Imp. Antoninus A. Juliano* (213) and probably *ibid.* 4, now attributed to Alexander—*Imp. Alexander A. Juliano*.

Line 9. *Si iure extranei accusat, i.e.*, if it is the father or husband who brings the charge, but not *iure mariti uel patris*,

Line 10. *Sed tum, post duos menses intra quattuor menses*. A charge of adultery may be brought by the father or husband, without risk of an action for malicious prosecution, within two months of the alleged act of adultery. Others cannot bring such a charge within this time (*Digest* xlviii. 5, l. 14, § 2.). After two months and within four months, all can bring such a charge, but only *iure extranei*. On failure to prove, they are liable to an action for malicious prosecution (*Digest, h.t. l. 14, § 3, and l. 30, pr.*). After four months, no charge of adultery could, it seems, be brought. Cp. also *Digest, h.t. l. 11, § 6, and Code* 9, l. 6.

Line 11. *Ut libertinus*. The freedman generally could not sue his patron, nor could he sue anyone else *extranei iure* on a charge of adultery. But if he is an aggrieved father or husband, he may even sue his patron on a charge of adultery, but only *extranei iure* (*Digest, h.t. l. 38, § 9*).

Line 12. *Minor uiginti quinque annorum*. Cp. *Digest, h.t. l. 15, § 6*

He is bound, however, to lay an information before the authority which has jurisdiction in the place where he has slain the adulterer, and must put away his wife. Unless he do so, the killing will not go unpunished.

But it should be noted that, according to a Rescript of the late Emperors Marcus and Commodus, the unlawful killing of an adulterer should be visited with a milder penalty. Antoninus the Great, too, pardoned those who, in the first outburst of passion, slew adulterers, etc.

The same Paulus, in the same Single Book and Title :

Anyone who brings a charge of adultery, in his paternal or marital capacity, is not liable for malicious prosecution, should he fail to prove. But if he lays such a charge, as an ordinary member of the public, and fails to prove, he is liable for malicious prosecution. In the latter case, too, the charge must be brought after two and within four months of the law-term ; even where the accusers are such persons as freedmen, minors under twenty-five years of age, or people branded with infamy, who in other cases may not bring accusations, and are nevertheless permitted to bring a charge of adultery, as Papinian has also written in the Fifteenth Book.

Papinian, in the Fifteenth Book of his Responses, under the Title "Of the Lex Julia Concerning Adulteries."

A Roman citizen who, without wedlock, cohabits with a Roman female citizen, or lives in matrimonial relations with a foreigner, cannot, in a marital capacity, charge her with adultery. But if he seeks legal redress for the wrong done him, he will not be repelled by the plea that he is a person branded with infamy, or is a freedman whose fortune is below thirty thousand sesterces, or has not a son.

Paulus, in the Single Book and under the Title above quoted :

An action can be brought in a marital capacity against a wife, but not against a betrothed. Severus and Antoninus have also issued a Rescript to this effect.

PAGE 76, line 12. *Infamis*, i.e., anyone who had been condemned on a charge involving character, e.g. theft, robbery, *iniuria*, or fraud ; a partner, *mandatarius*, *depositarius*, tutor, mortgagee (in *contractus fiduciae* only), if condemned for wilful breach of duty (*Digest* iii., 2, l. 1) ; bawds, mimes (*Digest* xlviii., 5, l. 24, *pr.*).

Lines 12-13. *Tamen ad accusationem admittitur*. The ground is that a man, otherwise incapacitated from bringing a charge, may seek legal redress for a wrong done to him (*Digest* xlviii. 2, l. 11, *pr.*). Cp. also the last sentence of chap. 5, in this title *sed ei non opponitur infamia.....propriam iniuriam persequentibus.....*

Line 18. *Sed ei non opponetur*, etc., i.e., he can sue *iure extranei*.

IV. 7, 1 Papinianus libro singulari de adulteris :

Quaerebatur, an pater emancipatam filiam iure patris accusare possit. respondi: occidendi quidem facultatem lex tribuit eam filiam, quam habet in potestatem, aut [quae] eo auctore in manum conuenit: sed accusare iure patris ne quidem emancipatam 5 filiam pater prohibetur.

IV. 8, 1 Papinianus eodem libro singulari (et titulo):

Cum patri lex regia dederit in filium uitae necisque potestatem, quo bonum fuit lege comprehendere, ut potestas fieret etiam filiam occidendi, uelis mihi rescribere: nam scire cupio. 10 respondit: numquid ex contrario praestat nobis argumentum haec adiectio, ut non uideatur lex non habenti dedisse, [sed occidi eam cum adultero iussisse], ut uideatur maiore aequitate ductus adulterum occidisse, cum nec filiae pepercerit?

IV. 9, 1 Idem:

15

Si pater quis adulterum occidit et filiae suae pepercit, quaero quid aduersus eum sit statuendum? respondi: sine dubio iste pater homicida est: igitur tenebitur lege Cornelia de sicariis. plane si filia non uoluntate patris, sed casu seruata est, non minimam habebit defensionem pater, quod forte fugit filia. nam 20 lex ita punit homicidam, si dolo malo homicidium factum fuerit, hic autem pater non ideo seruauit filiam, quia uoluit, sed quia occidere eam non potuit.

IV, 10, 1 Idem:

Si maritus uxorem suam in adulterio deprehensam occidit, 25 an in legem de sicariis incidat, quaero. respondi: nulla parte legis marito uxorem occidere conceditur: quare aperte contra legem fecisse eum non ambigitur. sed si de poena tractas, non inique aliquid eius honestissimo calori permittitur, ut non quasi homicida puniatur capite uel deportatione, sed usque ad 30 exilium poena eius statuatur.

Line 9. *Quo bonum* with Huschke; Mommsen reads *quod bonum*, which is awkward.

Lines 12-13. [*Sed occidi eam cum adultero iussisse*]; instead of this Huschke supplies (*occidendi potestatem, sed necessitatem imposuisse*).

Line 19. *Plane si filia non uoluntate patris.....quod forte fugit filia*. Cp. *Digest* xlviii., 5, l. 23, § 4.

Line 27. *Aperte*. Huschke would justify the reading in the Berlin MS. which he takes to be *ea parte* (and not *a parte*) as a reference to that part of the *Lex de Sicariis*, where lawful and unlawful homicide is discussed in contrast to that part of the *Lex* which deals with penalties.

Lines 30-31. *Sed usque ad exilium poena eius statuatur*. Cp. below in this title, chap. 12, § 4, *lenius puniri placuit*; also *Digest* xlviii. 8, l. 1, § 5; *ibid.*, xxix. 5, l. 3, § 3.

Papinian, in his Single Book "On Adulteries " :

The question was asked, whether a father could, in his paternal capacity, bring a charge of adultery against his emancipated daughter. I answered: The law gives him, indeed, the right of killing the daughter whom he has in his power, or who, with his consent, has passed into marital control. But he is not forbidden to bring, in his paternal capacity, an action for adultery against his daughter, even if she is emancipated.

Papinian, in the same Single Book and Title :

As a law of the Regal period had already invested the father with power of life and death over his daughter, what was the purpose of expressly stating in the Statute that he also had the right of killing the daughter? Will you please reply, as I wish to know. He answered: Does not this addition, on the contrary, afford us a proof that the Statute is not to be regarded as conferring a new power (upon the father), but that it actually imposes upon him the duty of killing her, together with the adulterer, so that, in killing the adulterer, he is seen to have been influenced by motives of higher justice, since he has not even spared his daughter.

The same author :

If a father has slain the adulterer and spared his daughter, what, I ask, is his legal position? He answered: That father is undoubtedly a homicide and therefore liable under the "Lex Cornelia Concerning Assassins." Obviously, if the daughter escaped death, not by her father's wish, but by chance, as, for instance, if she fled, the father will have a good defence. For the law only punishes a manslayer, when he has caused death with evil intent. The father, however, did not in this case spare his daughter's life because he wished to do so, but because he was unable to kill her.

The same author :

If the husband kills his wife taken in adultery, does his case fall under the Statute concerning Assassins? He answered: Nowhere in that Statute, is the right granted to the husband to kill the wife. Hence, there is no doubt that the husband has manifestly committed a breach of the law. But if you are discussing the punishment, it is not unfair that allowance should be made for his righteous indignation, and he ought not to be punished as a murderer, with death or deportation, but his sentence should be limited to exile.

IV. 11, 1 Idem sic: De mancipiis alterutrius marito uel patre accusante quaestionem habendam palam est: an idem extraneo accusatori permitti debeat, quaero. respondit: potest uideri ea ratio fuisse permittendi istis personis de seruis quaestionem habere, ut diligentius dolorem animi sui, item iniuriam laesae domus non translatie persequerentur. sed quoniam non facile tale delictum sine ministerio seruorum admitti creditum est, ratio eo perduxit, ut etiam extraneo accusante mancipia quaestioni tormentorum subicerentur a iudicibus.

IV. 12, 1 Paulus libro sententiarum [secundo] sub titulo de adulteris: 10
Permittitur [patri] tam adoptiuo quam naturali, adulterum cum filia cuiusque dignitatis domi suae uel generi sui deprehensum 2 sua manu occidere. filius familias pater si filiam in adulterio deprehenderit, uerbis quidem legis prope est, ut non possit 3 occidere: permittitur tamen etiam ei, ut occidat. maritus in 15 adulterio deprehensus non alios quam infames et eos qui corpore quaestum faciunt, seruos etiam et liberos excepta uxore, quam 4 prohibetur, occidere potest. maritum, qui uxorem deprehensam cum adultero occidit, quia hoc inpatientia iusti doloris admisit, 5 lenius puniri placuit. occiso adultero dimittere statim maritus 20 debet uxorem atque ita triduo proximo profiteri, cum quo adultero 6 et in quo loco uxorem deprehenderit. inuenta in adulterio uxore maritus ita demum adulterum occidere potest, si eum domi suae 7 deprehendat. eum, qui in adulterio deprehensam uxorem non 8 statim dimiserit, reum lenocinii postulari placuit. serui uero 25 tam mariti quam uxoris in causa adulteri torqueri possunt, nec his libertas sub specie impunitatis data ualebit.

c. 13, 1, 2, 3 = Paulus ii. 26, 1, 2, 4 (ex Codd. Vesontino et Vaticano).

c. 12, 4, 5 = Paulus ii. 26, 5, 6 (ex codd. Vesontino et Vaticano).

c. 12, 6, 7 = Paulus ii. 26, 7, 8.

c. 12, 8. Paulus ii. 26, 9 is restored from this passage.

Line 1. *De mancipiis alterutrius.* Cp. Digest xlviii. 5, l. 27, §§ 6 and 15.

Lines 4-5. *Ut diligentius dolorem animi sui, item iniuriam laesae domus,* The former clause refers to the wronged husband, the latter to the injured father. The object was to prevent the injured parties from precipitately taking the law into their own hands.

Lines 6-9. *Sed quoniam...a iudicibus.* From the trend of the argument, it might be presumed that the stranger here means a husband or father, unable to sue in either of those capacities on account of the lapse of more than two months from the commission of the alleged offence; but Digest xlviii. 18, l. 17, *pr.* is quite general in its terms.

Line 16. *Infames,* see note on page 76, line 12.

Lines 16-17. *Qui corpore quaestum faciunt.* According to Huschke, public performers, such as paid gladiators or those who hire themselves out to fight in the arena with wild beasts. Cp. in this title, chap. 3, § 2, *eum qui auctoramento rogatus est ad gladium,* etc. According to Forcellini, the phrase *qui corpore quaestum faciunt* is to be taken *sensu obscuro.* *Seruos etiam et liberos,* Huschke has *seruos etiam et (liberos tam uxoris et suos quam parentium ac) liberorum.*

Line 17. *Excepta uxore.* The *uxor libertina* is here referred to.

Line 20. *lenius puniri.* See page 78, lines 28-31.

Lines 21-22. *Proferi...deprehenderit.* So, more summarily, above in this title, chap. 3, § 5, *debet autem profiteri,* etc.

The same author thus :

"It is common knowledge that when a father or husband brings a charge of adultery, slaves belonging to either of the accused parties may be put to the torture. But ought this to be allowed," I ask, "when the accuser is a stranger? He replied: We may well take it that the reason for allowing the first-mentioned to have slaves put to the torture was, that they might the more diligently and without remissness seek legal redress for their outraged feelings and the wrong done to the family honour. But since such an offence could not, it was believed, have been easily committed without the aid of the slaves, it logically followed that even where the accuser was a stranger, slaves might be put by the judges to the torture.

Paulus, in the Second Book of The Sentences, under the Title "Of Adulteries" :

An adoptive or a natural father is permitted to kill with his own hand the adulterer taken with his daughter in his house or in that of his son-in-law, whatever be the adulterer's rank.

The strict terms of the law would imply that a father who is a *filius familias* has not the right to kill his daughter taken in adultery. Still he, too, is permitted to do so.

The husband has the right to kill the adulterer taken in the act only when he belongs to one of the following classes: Persons branded with infamy, public performers, slaves and freedmen. The wife is excepted by an express prohibition.

Where a husband kills his wife whom he has taken in adultery, the accepted rule is that he should be punished lightly, because he acted under the over-mastering influence of a just indignation.

When he has killed the adulterer, the husband must at once put away his wife and then lay an information within three days as to the person with whom, and the place where, she was taken in adultery.

Where the wife is taken in adultery, the husband may only kill the adulterer if he apprehends him in his own house.

It is accepted that a husband who does not at once put away his wife whom he took in adultery, may be charged with bawdry.

In trials for adultery, slaves of the husband or wife may be put to the torture; enfranchisement granted them with the view of securing exemption will not avail.

PAGE 80, lines 24-25. *Eum;.....placuit.* Cp. *Digest* xlviii. 5. l. 29, *pr.*

Line 26. *Mariti.* Cp. *Digest*, *h.t.* l. 27, § 14.

Lines 26-27. *Nec his libertas.....ualebit.* Cp. *Digest* xl. 9. ll. 12-14.

MOSAICARUM ET ROMANARUM

(TITVLVS V.)

DE STVPRATORIBVS.

V. 1, 1 Moyses dicit :

Qui manserit cum masculo mansione muliebri, aspernamentum est : ambo moriantur, rei sunt.

V. 2, 1 Paulus libro sententiarum II sub titulo de adulteris :

Qui masculum liberum inuitum stuprauerit, capite punietur.
2 qui uoluntate sua stuprum flagitiumque inpurum patitur, dimidia parte bonorum suorum multatur nec testamentum ei ex maiore parte facere licet.

V. 3, 1 Hoc quidem iuris est : mentem tamen legis Moysis imperatoris Theodosii constitutio ad plenum secuta cognoscitur. (item Theodosianus) :

Imp. Valentinianus Theodosius et Arcadius Auggg. ad Orientium uicarium urbis Romae. Non patimur urbem Romam uirtutum omnium matrem diutius effeminati in uiro pudoris contaminatione foedari et agreste illud a priscis conditoribus robur fracta molliter plebe tenuatum conuicium saeculis uel conditorum inrogare uel principum, Orienti k[arissime] ac iuc[undissime] 20 nobis. laudanda igitur experientia tua omnes, quibus flagiti usus est uirile corpus muliebriter constitutum alieni sexus damnare patientia nihilque discretum habere cum feminis, occupatos, ut flagitii poscit inmanitas, atque omnibus eductos, pudet dicere, uirorum lupanaribus spectante populo flammae uindictibus expiabit, ut uniuersi intellegant sacrosanctum cunctis esse debere hospitium 25 uirilil animae nec sine summo supplicio alienum expetisse sexum qui suum turpiter perdidisset. Prop. pr. id. Maias Romae in atrio Mineruae.

c. 2. 1 = Paulus ii. 26, 12 (ex codd. Vesontino et Vaticano).

c. 2, 2. Paulus ii. 26, 13 is restored from this passage.

c. 3, 2, l. 20, omnes—l. 24 expiabit = cod. Theod. ix. 7, 6.

Lines 4-5. Lev. xx. 13: If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.

Note that the Collatio gives the text in a summarised form.

Lines 8-10. *Dimidia parte.....licet*. One half of the property of which he is possessed at the time of conviction is forfeited to the State and of whatever he possesses at the time of death the State takes a half. Severus was the author of this constitution. (Zosimus, 1, 8.)

Line 11. *Hoc quidem iuris est*, i.e., as interpreted by the jurists.

Lines 12-13. *Item Theodosianus*; this, according to the view of editors and critics, is an interpolation. Cp. Haenel, Theodosian Code, p. 846.

Line 20. *Experientia tua*: a title of honour. Cp. Th. C. xvi. 5, chap. 28, *de haeret. ideoque experientia tua*; *ibid.* viii. 5, 57, *ne experientiae tuae*, a title used as a synonym to *laudabilitas tua* in the same paragraph.

LEGUM COLLATIO

FIFTH TITLE.

"OF DEBAUCHERS."

Moses says :

If anyone hath intercourse with a male as with a woman, it is an abomination. Let them both die ; they are guilty.

Paulus, in the Second Book of "The Sentences," under the Title "Of Adulteries."

He who debauches a free male against his will shall suffer capital punishment.

Whoever willingly suffers himself to be debauched, forfeits half his property, and is not permitted to make testamentary disposition of more than half of the remainder.

This indeed is the law. But a constitution of the Emperor Theodosius followed to the full the spirit of the Mosaic Law. (Likewise the Theodosian Code.)

The Emperors Valentinian, Theodosius and Arcadius to Orientius, Vicar of the City of Rome: We cannot, dear and well-beloved Orientius, permit the City of Rome, mother of all the virtues, to be defiled any longer by the pollution of Sodomite practices, and the sturdy manhood derived from our ancient founders to be enfeebled, and thus, with the nation enervated by debauchery, a reproach be cast upon the ages of the Founders and the present Imperial time. All, therefore, whose wicked practice it is to treat the male body as if it were that of a female and condemn it to the functions of the opposite sex, holding themselves in no wise different from women—these, as the monstrous character of their crime demands, shall, under the instruction of Your Excellency, be arrested and dragged forth from the male brothels—shame to mention them—and, in the sight of the people be purged of their crime in the avenging flames; and so all will learn that the tabernacle of the soul of man is to be regarded by every one as sacred and inviolate, and no one who has shamefully forfeited his own sex shall seek to play the part of the other sex without suffering the extreme penalty of the law. Issued the 14th of May in the Hall of Minerva.

PAGE 82, line 20. *Flagiti usus*; Huschke has *flagitiosus luxus*: whose wicked sensuality induces them, etc.

Line 22. *occupatos = manu militari captos*. Huschke omits the comma after *feminis*, and explains *occupatos* to mean "those who are engaged in sodomy" for profit

Lines 27-28. *propminervae*. The date and place are given differently in Th. C.

DE INCESTIS NVPTIIS.

VI. 1, 1 Moyses dicit:

Quicumque concubuerit cum muliere uxore patris sui, pu-
 2 denda patris sui detexit, mortem moriantur ambo: rei sunt. et 5
 quicumque concubuerit cum nuru sua, mortem moriantur ambo:
 rei sunt.

VI. 2, 1 Ulpianus libro regularum singulari sub titulo de nuptiis:

Inter parentes et liberos, cuiuscumque gradus sint, conubium
 2 non est. inter cognatos autem ex transuerso gradu olim quidem 10
 usque ad quartum gradum matrimonia contrahi non poterant:
 nunc autem ex tertio gradu licet uxorem ducere, sed tantum
 fratris filiam, non etiam sororis, nec amitam nec materteram,
 3 quamuis eodem gradu sint. eam quae nouerca uel priuigna, uel
 4 quae nurus uel socrus fuit, uxorem ducere non possumus. si 15
 quis eam quam non licet uxorem duxerit, incestum matrimonium
 contrahit: ideoque liberi in potestate eius non fiunt, sed quasi
 uulgo concepti spurii sunt.

VI. 3, 1 Paulus libro sententiarum [secundo] sub titulo de nuptiis:

Inter parentes et liberos, matrimonia contrahi non possunt; 20
 iure ciuili [nec sororem] nec filiam sororis aut neptem uxorem
 2 ducere possumus: proneptem aetatis ratio prohibet. adoptiua
 cognatio impedit nuptias inter parentes ac liberos omnimodo, inter
 fratres (ac sorores) eatenus, quatenus capitis minutio non
 3 interuenit. nec socrum nec nurum [nec] priuignam nec 25
 nouercam aliquando citra poenam incesti uxorem ducere licet,
 sicut nec amitam aut materteram. sed qui [affinem] uel
 cognatam contra interdictum duxerit, remisso mulieri iuris errore
 ipse poenam adulterii lege Iulia patitur, non etiam ducta.

c. 2 = Ulpianus Reg. v. 6, 7.

Lines 4-7. Lev. xx. 11, 12: And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them.

And if a man lie with his daughter-in-law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them.

Note that the Collatio gives the Scriptural texts in summarised form.

Lines 20-21. *Non possunt; iure ciuili (nec sororem)*. I have adopted this order of words from Huschke. Mommsen has *iure ciuili* in line 20 after *liberos*. This cannot be correct, for marriage between ascendants and descendants are unlawful, *iure gentium*. See above in this title, chap. 2, § 1; also Gaius i. 59; *Digest* xxiii. 2, l. 53, and explicitly *ibid.* l. 68, *iure gentium incestum committit qui ex gradu ascendentium uel descendantium uxorem duxerit*. But a sister's daughter or a granddaughter is only prohibited *ciuili iure* (*Digest* xlviii. 5, l. 38, §§ 1 and 2). By Jewish Law marriage with a niece is permitted and even commended.

Line 24. (*ac sorores*), adopted from Gaius i. 61.

Line 27. (*affinem*), adopted from Huschke.

Lines 27-29. *sed qui.....ducta*. Cp. *Digest* xlviii. 5, l. 11, § 1, and l. 38, §§ 2, 4, 7.

LEGUM COLLATIO.

SIXTH TITLE.

"OF INCESTUOUS MARRIAGES."

Moses says :

Whoever lieth with a woman, his father's wife, hath uncovered his father's nakedness. Both shall surely die ; they are guilty.

And whoever lieth with his daughter-in-law—both shall surely die ; they are guilty.

Ulpian, in his Single Book of Rules, under the Title "Of Marriages" :

There can be no lawful wedlock between ascendants and descendants, whatever the degree.

At one time, marriages could not take place between cognates laterally related up to the fourth degree. Now, however, a man is allowed to marry a relative of the third degree, but only a brother's daughter ; not, however, a sister's daughter, a father's sister, or a mother's sister, though these are also related to him in the same degree.

A man cannot marry a woman who has been his stepmother, stepdaughter, daughter-in-law, or mother-in-law.

Marriage with a woman whom it is unlawful to take to wife is incestuous, and the children accordingly do not come in the father's power, but are illegitimate, as though they had been conceived in promiscuous intercourse.

Paulus, in the Second Book of "The Sentences," under the Title "Of Marriages" :

No marriages can be contracted between ascendants and descendants. Nor can we, according to the law of Rome, marry a sister, a sister's daughter or granddaughter. The consideration of age is a bar to marriage with her great-granddaughter.

Adoptive relationship is, under all circumstances, an impediment to marriages between ascendants and descendants ; but between brothers [and sisters] only so long as there has been no change of status.

Furthermore, marriage can never take place with a mother-in-law, daughter-in-law, stepdaughter, or stepmother, nor with a father's or mother's sister, without subjecting the parties to the penalties for incest. But if a man has, contrary to the prohibition, married one related to him by blood, he suffers the penalty for adultery under the Lex Julia, but not so the woman whom he married, since a woman is pardoned a mistake caused by ignorance of the law.

VI. 4, 1 Gregorianus libro quinto sub titulo de nuptiis. Exemplum litterarum Diocletiani et Maximiani imp. talem conjunctionem grauiter punire commemorat :

Exemplum edicti Diocletiani et Maximiani [Augg. et Constantii et Maximiani] nobilissimorum Caesarum. Quoniam piis 5
religiosisque mentibus nostris ea, quae Romanis legibus caste sancteque sunt constituta, uenerabilia maxime uidentur atque aeterna religione seruanda, dissimulare ea, quae a quibusdam in praeteritum nefarie incesteque commissa sunt, non oportere credimus: cum uel cohibenda sunt uel etiam uindicanda, 10
insurgere nos disciplina nostrorum temporum cohortatur. ita enim et ipsos immortales deos Romano nomini, ut semper fuerunt, fauentes atque placatos futuros esse non dubium est, si cunctos sub imperio nostro agentes piam religiosamque et quietam et
2 castam in omnibus mere colere perspexerimus uitam. in quo id 15
etiam prouidendum quam maxime esse censuimus, ut matrimoniis religiose atque legitime iuxta disciplinam iuris ueteris copulatis tam eorum honestati, qui nuptiarum coniunctionem sectantur, quam etiam his, qui inde deinceps nascentur, seruata religione incipiat esse consultum et honestate nascendi etiam posteritas 20
ipsa purgata sit. id enim pietati nostrae maxime placuit, ut sancta necessitudinum nomina optineant apud affectus suos piam ac religiosam consanguinitati debitam caritatem. nefas enim credere est [duratura] ea, quae in praeteritum a conpluribus constat esse commissa, cum pecudum ac ferarum promiscuo ritu ad 25
inlicita conubia instinctu execrandae libidinis sine ullo respectu
3 pudoris ac pietatis inruerint. sed quaecumque antehac uel 30
inperitia delinquentium uel pro ignorantia iuris barbaricae inmanitatis ritu ex inlicitis matrimoniis uidentur admissa, quamquam essent seuerissime uindicanda, tamen contemplatione
clementiae nostrae ad indulgentiam uolumus pertinere, ita tamen, ut quicumque in ante actum tempus inlicitis incestisque se matrimoniis polluerunt, hactenus adeptos se esse nostram indulgentiam sciant, ut post tam nefaria facinora uitam quidem

Line 22. *affectus* = near and dear relation, in this passage children. Cp. Th. C. xii. 1, 26: *denique ex perfectissimis honorariis uel affectus eorum*.

Line 24. *duratura*; I have supplied this word before *ea*, on Mommsen's suggestion. Huschke reads (*atenim*) *nefas eam creare est ea, (eam sc. caritatem, Cp. Beier ad Cic. De offic. ii., p. 238): "it would be wrong that such tender feelings should be produced by the conditions that existed in the past."*

Line 28. *inperitia*. Huschke cannot see any distinction between *inperitia* and *ignorantia iuris*; he, therefore, suggests instead of *inperitia*, *impuritia*; the meaning would be, whether these illicit unions were due to libidinousness or to ignorance of the Law.

The Gregorian Code, in the Fifth Book, under the Title "Of Marriages":

The text of a letter by the Emperors Diocletian and Maximian states that such a union should be visited with severe punishment.

Text of the Edict of the illustrious [and august] Emperors Diocletian and Maximian [Constantius and Maximian]: Since to our deep sense of religion the principles of pure morality established by Roman laws are deemed especially worthy of reverence and of scrupulous observance at all times, we regard it as our duty not to ignore the abominable acts of incest that have been committed in the past by certain persons. The spirit of our times calls upon us to take strong measures against all such practices as are to be checked or even punished. The immortal Gods, on their part, will undoubtedly continue to be, as they have always been, favourable and friendly to the Roman Power, only if all who live under our rule shall be observed by us to lead pious and religious lives, and to observe in all things quiet and absolute purity.

We have herein resolved that we must also as far as possible ensure two things in the case of marriages contracted under the auspices of religion and law according to our ancient legal system: (1) We must, by observing the requirements of religion, safeguard the good repute of those who seek the nuptial bond, and also of their issue; and (2) we must see that their descendants, by the purity of their birth, are also free from taint. For, in accord with our sense of piety, we made it a special point that the holy terms of relationship should command among the near relatives an affection which is due by our holy religion to kinship. It would indeed be wrong to anticipate a continuance of those acts which in the past had notoriously been committed by many persons who, impelled by their execrable lust, and without regard for decency and religion, rushed blindly into lawless unions after the promiscuous manner of cattle and wild beasts. But as regards all such unions as have hitherto been contracted after the monstrous fashion of barbarians, whether through inexperience or in ignorance of the law, our will is that, despite the severe punishment they merit, they should, of our clemency, have pardon extended to them. The grant of this indulgence, however, to all those who have defiled themselves in the past by lawless and incestuous connections, is to be regarded by the offenders as a boon, since after such abominable misdeeds

sibi gratulentur esse concessam, sciant tamen non legitimos se suscepisse liberos, quos tam nefaria coniunctione genuerunt. ita enim fiet, ut de futuro quoque nemo audeat infrenatis cupiditatibus oboedire, cum et sciant ita praecedentes admissores istius modi criminum uenia liberatos, ut liberorum quos inlicito genuerunt 5 successione arceantur, quae iuxta uetustatem Romanis legibus negabatur.

Et optassemus quidem nec ante quicquam eius modi esse commissum, quod esset aut clementia remittendum aut VI. 4, 4 legibus corrigendum. sed posthac religionem sanctitatemque in 10 conubiis copulandis uolumus ab unoquoque seruari, ut se ad disciplinam legesque Romanas meminerint pertinere et eas tantum 5 sciant nuptias licitas, quae sunt Romano iure permissae. cum quibus autem personis tam cognatorum quam ex adfinium numero contrahi non liceat matrimonium, hoc edicto nostro complexi 15 sumus: cum filia nepte pronepte itemque matre auia proauia et ex latere amita ac matertera [sorore] sororis filia et ex ea nepte. itemque ex adfinibus priuigna nouerca socru nuru ceterisque quae antiquo iure prohibentur, a quibus cunctos uolumus abstinere. 6 Nihil enim nisi sanctum ac uenerabile nostra iura custodiunt 20 et ita ad tantam magnitudinem Romana maiestas cunctorum numinum fauore peruenit, quoniam omnes leges suas religione sapientia 7 pudorisque obseruatione deuinxit. quare hoc edicto nostro uolumus omnibus palam fieri, quod praeteritorum uenia, quae per clementiam nostram contra disciplinam uidetur indulta, ad ea 25 tantum delicta pertineat, quae in diem III kal. Ian. Tusco et 8 Anullino cons. uidentur esse commissa. si qua autem contra Romani nominis decus sanctitatemque legum post supra dictum diem deprehenduntur admissa, digna seueritate plectentur. nec enim ullam in tam nefario scelere quisquam aestimet ueniam se 30 consequi posse, qui tam euidenti crimini et post edictum nostrum a. 295 non dubitabit inruere. Dat. kal. Mai. Damasco Tusco et Anullino cons.

c. 4, 5 = *Cod. Ius.* v. 4, 17, with a different beginning: Nemini liceat contrahere matrimonium cum filia — abstinere.

Line 31. *Tam euidenti crimini*: Huschke suggests *in iam euidens crimen*.

Line 32. *Kal. Mai.* On the strength of the reading *Maias* in the Berlin MS., Huschke thinks that the number of days has fallen out before *Maias*.

their lives have been spared as an act of grace; they must know, however, that the children begotten of such wicked unions are not legitimate. The result will then be that in the future no one will dare to yield to his unbridled lusts, since they will be aware that those who before them had committed crimes of this character, though saved by the royal pardon from punishment, were nevertheless denied the right of being succeeded by their children whom they had begotten in illicit union, a right which, according to the ancient system, was denied them by the Roman laws. We could have wished that no such act had been committed, to need the exercise of our clemency or the correction of the law. And it is our will that henceforth, in contracting marriages, the requirements of religion and morality shall be observed by all, and all shall remember that they live under the Roman laws and institutions, and know that only such marriages are lawful as are sanctioned by the Roman law.

In this our Edict, we have enumerated the relatives, whether of the blood or by affinity, with whom marriage is prohibited, namely, a daughter, granddaughter, great-granddaughter, likewise a mother, grandmother, great-grandmother; and laterally, a father's sister, mother's sister [one's own sister], sister's daughter, or granddaughter. Among relatives by marriage, a mother-in-law, stepmother, stepdaughter, daughter-in-law, and relatives of other degrees with whom marriage is prohibited by ancient law; marriages within such degrees we forbid to all.

For our laws contain nothing but what is hallowed and worthy of reverence, and the Roman Empire has, under divine favour, attained its present greatness, only because it has safeguarded all its laws with the wise sanctions of religion and concern for morality.

Wherefore by this our Edict be it known to all that the pardon vouchsafed of Our grace for past offences, though seemingly against the spirit of our institutions, covers such offences only as appear to have been committed up to the 30th of December in the Consulship of Tuscus and Anullinus.

All offences against the honour of the Roman name and sanctity of the laws, found to have been committed after the above-named date, will be punished with condign severity. And if any person, after the publication of our Edict, shall not hesitate to rush into the commission of what is so clearly criminal, let him not count upon obtaining pardon for his heinous offence. Issued May 1st at Damascus in the Consulship of Tuscus and Anullinus.

VI. 5, 1 Hermogenianus sub titulo de nuptis :

Impp. Diocletianus et Maximianus Augg. Fl. Flauiano.
His qui incestas nuptias per errorem contrahunt, ne poenis
subiciantur, ita demum clementia principum subuenit, si postea
quam errorem suum rescierint, ilico nefarias nuptias diremerint. 5

a. 291 Prop. id. Mart. [Tiberiano] et Dione cons.

VI. 6, 1 Hanc quoque constitutionem Gregorianus titulo de nuptiis
inseruit, quae est tricesima et secunda, aliis tamen et die
[et cons.], id est : constitutio prop. V id. Iun. Diocletiano

a. 287 ter et Maximiano Augustis. 10

Papinianus libro singulari de adulteris :

Qui sororis filiam uxorem duxerat per errorem, antequam
praeueniretur a delatore, diremit coitum : quaero an adhuc possit
accusari ? respondit : ei qui coitu sororis filiae bona fide abstinuit,
poenam remitti palam est, quia qui errore cognito diremit coitum, 15
creditur eius uoluntatis fuisse, ut, si scisset se in eo necessitudinis
gradu positum, non fuisset tale matrimonium copulaturus.

VI. 7, 1 Idem dicitur in eos, qui incestas nuptias contraxerunt.
maledicti tamen sunt omnes incesti per legem, cum adhuc
rudibus populis ex diuino `nutu condita isdem 20
adstipulantibus sanciretur. et utique omnes maledicti
puniti sunt, quos diuina et humana sententia consona uoce
damnauit. lex diuina sic dicit :

Maledictus, inquit, dixit Moyses, qui concubuerit cum uxore
2 patris sui : et dicit omnis populus : fiat, fiat. maledictus, qui 25

Lines 2-6. *Impp.....Cons* : Haenel gives this Constitution in his edition of the Gregorian Code only, p. 30. Cp., for the law, *Digest* xlviii. 5, l. 38, § 7.

Lines 7-10. *Hanc.....Augustis* : this paragraph is regarded by all critics, except Dirksen, as an interpolation.

Lines 12-17. *Qui.....copulaturus*. Cp. *Digest* xlviii. 5, l. 38, §§ 5 and 6.

Line 14. *coitu* : Huschke adopts the reading of the MSS., *coniunctae*. But the text can stand, as *diremit coitum* occurs in the line below.

Line 18. *Idem*. The same condemnation is pronounced on incestuous unions in the Mosaic as in the Roman Laws.

Line 19. *Omnes incesti, i.e.*, not only the two cases of incest referred to in the Scriptural text at the head of the title, but all those that follow.

Line 22. *Puniti sunt*. The offences were not left to the condemnation of heaven, but were punished by human tribunals.

Line 24, till p. 92, l. 11. *Maledictus.....fiat*, Deut. xxvii. 20, 22, 23 : "Cursed be he that lieth with his father's wife : because he uncovereth his father's skirt. And all the people shall say, Amen.

Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother. And all the people shall say, Amen.

Cursed be he that lieth with his mother-in-law. And all the people shall say, Amen.

Lev. xviii. 12 : Thou shalt not uncover the nakedness of thy father's sister : she is thy father's near kinswoman.

Ibid. xviii. 13. Thou shalt not uncover the nakedness of thy mother's sister : she is

The Hermogenian Code, under the title "Of Marriages."

The Emperors Diocletian and Maximian to Flavius Flavianus: The clemency of the Emperors gives relief from penalties for incestuous marriages contracted in error, only if the parties, immediately upon discovery of the error, have broken off their unlawful union. Issued 15th of March, in the Consulship of [Tiberianus] and Dio.

This constitution has likewise been inserted in the Gregorian Code, under the title "Of Marriages," which is the thirty-second title, but with another date and names of other consuls:—namely, Constitution issued 9th of June, in the Consulship of the Emperors Diocletian (third year) and Maximian.

Papinian, in his Single Book "Of Adulteries":

If a man married his sister's daughter in error, and put an end to the union before he had been denounced by the informer, can a charge, I ask, be still brought against him. He answered: Where a man separates in good faith from his sister's daughter, the penalty is obviously remitted; because if one, on discovery of his error breaks off the union, it is presumed that had he known that he stood within the [forbidden] degree of relationship, he would not have contracted such a marriage.

The same is said against those who have entered into incestuous marriages. All guilty of incest were moreover cursed by the Law, when it was promulgated by Divine Authority to a people as yet uncultivated, and was then confirmed by a covenant into which they entered. And certainly all those upon whom a curse was pronounced, and whom Divine and human judgment with one voice condemned, received punishment. Thus saith the Divine Law:

Cursed, saith (God), Moses declared, be he who lieth with his father's wife; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his sister, either on his father's or mother's side; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his daughter-in-law; and all the people saith, "So be it, so be it."

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concubuerit cum sorore sua de patre aut de matre: et dicit omnis
 3 populus: fiat, fiat. maledictus, qui concubuerit cum nuru sua: et
 4 dicit omnis populus: fiat, fiat. Maledictus, qui concuberit cum
 5 socru sua: et dicit omnis populus: fiat, fiat. maledictus, qui
 concubuerit cum sorore patris sui: et dicit omnis populus: fiat, 5
 6 fiat. maledictus, qui concubuerit cum sorore matris suae: et
 7 dicit omnis populus: fiat, fiat. maledictus, qui concubuerit cum
 8 sorore uxoris suae: et dicit omnis populus, fiat, fiat. maledictus,
 qui dormierit cum uxore fratris sui: et dicit omnis populus: fiat,
 9 fiat. maledictus, qui dormierit cum omni pecore: et dicit omnis 10
 populus: fiat, fiat.

(TITVLVS VII.)

DE FVRIBVS ET DE POENA EORVM.

VII. 1, 1 Quod si duodecim tabularum nocturnum furem [quoquo modo,
 diurnum] autem si se audeat telo defendere, interfici iubent, 15
 scitote, iuris consulti, quia Moyses prius hoc statuit, sicut
 lectio manifestat. Moyses dicit:

Si perfodiens nocte parietem inuentus fuerit fur et percusserit
 eum alius et mortuus fuerit hic, non est homicida is qui per-
 2 cusserit eum. si autem sol ortus fuerit super eum, reus est mortis 20
 percussor: et ipse morietur.

VII. 2, 1 Paulus libro sententiarum V ad legem Corneliam de sicaris et
 ueneficis:

Si quis furem nocturnum uel diurnum cum se telo defenderet
 occiderit, hac quidem lege non tenetur, sed melius fecerit, qui 25
 eum comprehensum transmittendum ad praesidem magistratibus
 optulerit.

VII. 3, 1 Ulpianus libro XVIII ad edictum sub titulo si quadrupes
 pauperiem dederit:

Iniuria occisum esse merito adicitur: non enim sufficit 30

c. 3, 1 *till* factum = *Dig.* ix. 2, 3.

thy mother's near kinswoman. *Ibid.* xviii. 18: Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her lifetime. (Note the last clause. According to Jewish Law marriage with a *deceased* wife's sister was never forbidden). *Ibid.* xviii. 16: Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness.

Deut. xxviii. 21: Cursed be he that lieth with any manner of beast. And all the people shall say, Amen.

Note that the incests forbidden in the text at the beginning of this title are put under a ban in the texts quoted here (Deut. xxvii. 20 and xxvii. 23, according to the Septuagint *μετὰ νύμφης αὐτοῦ*). The author has altered the texts in Leviticus and framed them after the fashion of those he quotes from Deuteronomy, to indicate that the same penalties, Divine and human, apply to all incests.

LEGUM COLLATIO.

Cursed be he who lieth with his mother-in-law; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his father's sister; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his mother's sister; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his wife's sister; and all the people saith, "So be it, so be it."

Cursed be he who sleepeth with his brother's wife; and all the people saith, "So be it, so be it."

Cursed be he who sleepeth with any beast; and all the people saith, "So be it, so be it."

TITLE VII.

OF THIEVES AND THEIR PUNISHMENT.

With regard to the ordinance of the Twelve Tables that a thief, coming at night, be in any case killed, but if he come by day, only if he venture to defend himself with a weapon, know, ye jurists, that Moses had previously so ordained, as a perusal (of his Law) will show. Moses says:

If a thief be found breaking through the wall by night and one strike him and he die, the one who struck him is not a murderer.

But if the sun has risen on him, the smiter is guilty of his death and shall himself die.

Paulus, in the Fifth Book of The Sentences, on "The *Lex Cornelia* concerning Assassins and Poisoners":

If one kill a thief who comes at night or comes by day and defends himself with a weapon, he is not liable under this law; but he would have done better, had he apprehended and delivered him to the Magistrates, to be sent to the Provincial President for trial.

Ulpian, in the Eighteenth Book of his Commentary on the Edict, under the title "If a four-footed animal has caused damage to property":

The term "wrongfully" in the phrase "killed wrongfully"

PAGE 92, lines 18-21. Exod. xxii. 2-3: If a thief be found breaking in, and be smitten that he die, there shall no blood be shed for him. If the sun be risen upon him, there shall be blood shed for him.

Line 28. *Libro* xviii.; as correctly given in the *Digest*: the MSS. have *libro* viii.

Lines 28-29. *Si quadrupes pauperiem dederit*. Ulpian wrote in his 18th book on the edict under the title: *Si quadrupes pauperiem dederit* (Cp. *Digest* ix. 1, l. 1. But what follows here in the Collatio is what he wrote on the edict concerning the *Lex Aquilia* Cp. *Digest* ix. 2, l. 3; *ibid.*, l. 5, *pr.* and § 1).

occisum, sed oportet iniuria id esse factum. proinde si quis
 seruum latronem occiderit, lege Aquilia non tenetur, quia [iniuria]
 2 non occidit. sed et quemcumque alium ferro se petentem qui
 occiderit, non uidebitur iniuria occidisse. proinde si furem
 nocturnum, quem lex duodecim tabularum omnimodo permittit 5
 occidere, aut diurnum, quem aequae lex permittit, sed ita demum,
 si se telo defendat, uideamus, an lege Aquilia teneatur. et
 3 Pomponius dubitat, num haec lex non sit in usu. et si quis noctu
 furem occiderit, non dubitamus, quin lege Aquilia [non] teneatur:
 sin autem, cum posset adprehendere, maluit occidere, magis est, 10
 ut iniuria fecisse uideatur: ergo etiam lege Cornelia tenebitur.
 4 iniuriam autem accipere hic nos oportet non, quemadmodum et
 circa iniuriarum actionem, contumeliam quandam, sed quod non
 iure factum est, hoc est contra ius, id est si culpa quis occiderit.
 et reliqua. 15

VII. 4, 1 Ulpianus libro octauo de officio proconsulis sub titulo
 de furibus:

Fures ad forum remittendi sunt diurni, nocturnique extra
 ordinem audiendi et causa cognita puniendi, dummodo in poena
 eorum sciamus operis publici temporari modum non egrediendum. 20
 2 idem et in balneariis furibus. sed si se telo fures defendunt uel
 effractores uel ceteri his similes nec quemquam percusserunt,
 metalli poena humiliores, honestiores uero relegatione adficiendi
 crunt.

VII. 5, Paulus libro sententiarum II sub titulo de furibus: 25

1, 2 Furti quocumque genere damnatus famosus efficitur. fur

c. 3, 2 *till* occidisse = *Dig.* ix. 2, 5 *pr.*

c. 3, 3 = *Dig.* ix. 2, 5 *pr.*

c. 3, 4 = *Dig.* ix. 2, 5, 1.

c. 4 = *Dig.* xlvii. 17, 1 *abridged.*

c. 5, 1 = *Paulus* ii. 31, 15.

c. 5, 2-6 = *Paulus* ii. 31, 1-5.

Line 8. *Noctu*; Huschke prefers the reading in the *Digest*, *metu* (*mortis*), which he thinks was the reading originally intended in the Berlin Codex.

Line 11. *Ergo etiam lege Cornelia tenebitur*. If the slayer of the thief could have arrested him, he would be liable, under the *Lex Aquilia*, to the master if the thief was a slave, and also under the *Lex Cornelia* for homicide.

Line 18. *Fures ad forum*. The ordinary tribunal for the trial of civil cases. Cp. *ad forum remittendus est* in title xi., chap. 4, and *ibid.*, chap. 6, § 2. Such cases are only heard when the *forum* is sitting and dealing with civil matters. Hence the term, *forenses actiones* (*Digest* xlvii. 9, l. 1, § 1).

Line 26. *Furti.....efficitur*. Huschke suggests that this sentence properly belongs to the end of this chapter, and should similarly be added after *Paulus* ii. 31, 1-5.

Line 26. *Furti.....efficitur*. Cp. *Digest* iii. 2, l. 6, *pr.*

is rightly added, for it is not enough that a death has been caused, but it is necessary (to constitute the offence) that it should have been caused wrongfully. Thus, one who has killed a slave who is a highway robber, is not liable under the *Lex Aquilia*, because he has not killed wrongfully.

So too, the killing of a person who makes an armed attack, will not be deemed wrongful. If, then, a thief coming by night has been killed, as is allowed by the Law of the Twelve Tables in all circumstances, or one coming by day, as is equally allowed by the Law, but only when he offers armed resistance, is the slayer liable under the *Lex Aquilia*? Pomponius is uncertain whether this law does not apply.

In the case of a thief killed at night, we have no doubt that the killer is not liable under the *Lex Aquilia*. But if he choose to kill the thief when he might have arrested him, the better opinion is that it should be regarded as a wrongful act. He will therefore also be liable under the *Lex Cornelia*.

The term "wrongfully" [*iniuria*] here, is not to be taken in the sense of insult, as in the phrase *Iniuriarum Actio* "Action for outrage," but as meaning that which is done unlawfully, that is, against the law; namely, where death has been occasioned through someone else's fault, etc.

Ulpian, in the Eighth Book of the Proconsular Functions, under the title "Of Thieves":

Thieves who have stolen by day are to be sent for trial to the civil tribunal; those who steal at night are tried and punished on conviction, under the Praetor's extraordinary jurisdiction; yet, in punishing them, it must be borne in mind that we must not inflict on them a heavier penalty than a definite term in the public works. The same applies to those who steal at the baths. But thieves who offer armed resistance, break into houses, or are guilty of similar aggravated thefts, even though they have not assaulted anyone, are, if they belong to the lower orders, to be sentenced to the mines; if to the better classes, to deportation.

Paulus, in the Second Book of The Sentences, under the title "Concerning Thieves":

Anyone convicted of any kind of theft, becomes infamous.

A thief is one who handles property belonging to another [with fraudulent intent].

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VII. 5, 3 est qui rem alienam contrectat. furtorum genera sunt quattuor, manifesti, nec manifesti, concepti et oblati. manifestus fur est, qui in faciendo deprehensus est, et qui intra terminos eius loci, unde furatus est, comprehensus est, uel antequam ad eum locum, quo destinauerat, peruenerit. nec manifestus est fur, qui in 5 rapiendo quidem comprehensus non est, sed eum fecisse negari non potest. concepti actione tenetur, apud quem furtum est inuentum. oblati actione is tenetur, qui rem furtiuam ali optulit, ne apud se inueniretur. furti actione is agere potest, cuius 10 interest rem non perisse. conceptiua autem agere potest, qui 6 rem concepit et inuenit. oblati agere potest, penes quem res concepta inuenta est.

(TITVLVS VIII.)

DE FALSO TESTIMONIO.

VIII. 1, 1 Moyses dicit: 15
Si steterit testis iniustus aduersus hominem accusandum
2 accusans eum impietatis, stabunt duo homines, quibus est inuicem contentio, ante deum et ante sacerdotes et ante iudices, quicumque
3 fuerint in illis diebus. cum inquisierint iudices diligenter et
4 inuentus fuerit testis iniustus testificans iniusta, insurgentes 20 aduersus eum facietis ei, sicut uoluit malefacere et delebitis
5 malum de medio uestrum: et ceteri audientes timebunt nec audebunt haec mala facere inter uos.
2, 1 Paulus libro singulari de poenis omnium legum sub titulo ad legem Iuliam de adulteris: 25
Qui falsum testimonium dixerit, proinde tenebitur, ac si lege Cornelia testamentaria damnatus esset.

Lines 4-5. *Ad eum locum quo.* Huschke supplies *eo die* after these words, before *destinauerat*. Cp. *Digest* xlvii. 2, l. 4. See Gaius iii. 184, where this point is mooted by the jurists.

Line 11. *Et inuenit;* Huschke suggests [(*id est inuenit*)] and regards the whole passage as a gloss. But *concepit* may already, in Paulus' time, have been an archaic term, needing the explanation *et inuenit*.

Line 12. *inuenta est.* The above remark applies to [(*id est inuenta*)], suggested by Pithou and adopted by Huschke.

Lines 16-23. Deut. xix. 16-20: If a false witness rise up against any to testify against him that which is wrong; then both the men, between whom the controversy is, shall stand before the Lord, before the priests and the judges, which shall be in those days; and the judges shall make diligent inquisition: and, behold, if the witness be a false witness, and hath testified falsely against his brother; then shall ye do unto him, as he had thought to have done unto his brother: so shalt thou put the evil away from you. And those which remain shall hear, and fear, and shall henceforth commit no more any such evil among you.

Uoluit malefacere better represents the original Hebrew and the Septuagint than does the Authorised Version. כִּמְעָלָא like *ἐνοργεσάτο*, means "thought evilly, plotted." It is interesting to note that the Jewish Law, according to the interpretation of the Pharisees, laid stress on *uoluit*, and only punished the witnesses if the falsehood of their testimony had

LEGUM COLLATIO.

There are four kinds of theft: manifest, not manifest, receiving stolen goods, and passing them on. A manifest thief is one caught in the act, or apprehended within the bounds of the place wherein he had stolen it, or before his arrival at the place where he had intended to deposit it. A thief guilty of a non-manifest theft is one who was not arrested in the act of stealing, but whose commission of the theft cannot be denied. A man is liable for receiving stolen goods, on whose premises the stolen article has been found. A man is liable for passing stolen property, when he has passed it on to another person, to prevent its being found on his own premises.

Anyone to whose interest it is that a thing shall not cease to exist can sue for it in an action for theft.

The one who seized, [and] found the stolen article is the proper person to sue in an action for receiving. The one on whose premises it was seized [that is, with whom it was found], is the proper person to sue the thief for passing it on to him.

TITLE VIII.

"OF FALSE TESTIMONY."

Moses says :

If a false witness rise up against a man to accuse him of impiety, the two men between whom there is a controversy shall stand before God and before the priests and before the judges who shall be in those days.

When the judges shall have made diligent inquiry and the witness shall have been found unjust, testifying unjust things, ye shall rise against him, and do unto him according to the evil he wished to do, and ye shall blot out evil from your midst.

And the rest of the people shall hear and fear and not dare to do these evil things among you.

Paulus, in his single book concerning penalties imposed by all laws, under the title "On the *Lex Julia* concerning Adulteries":

Whoever has given false testimony will be liable in the same way as if he had been convicted under the *Lex Cornelia Testamentaria*.

been discovered before sentence on the accused had been carried out. This was in accordance with public policy. If, after a miscarriage of justice had taken place, the false witnesses had been executed on the denunciation of other witnesses, there was no guarantee that the second set of witnesses might not in their turn have their testimony impeached.

PAGE 96, lines 26-27. *qui.....esset*, i.e., he suffers deportation. Cp. Paulus iv. 7, § 1; see also *Digest* xlviii. 10, l. 33, for interdiction from fire and water, as the penalty for fraudulently quoting a non-existent Constitution.

VIII. 3, 1 Paulus libro sententiarum quinto sub titulo de testibus et de quaestionibus:

Hi, qui falso uel uarie testimonia dixerunt uel utrique parti prodiderunt, aut in exilium aguntur aut in insulam relegantur aut curia submouentur.

VIII. 4, 1 Idem libro [sententiarum quinto sub titulo] ad legem Corneliam de sicaris et ueneficis:

Lex Cornelia poenam deportationis infligit ei qui hominem occiderit eiusque rei causa furtiue faciendi cum telo fuerit, et qui uenenum hominis necandi causa habuerit uendiderit parauerit, falsumue testimonium dixerit quo quis periret, mortisue causam praestiterit. quae omnia facinora in honestiores poena capitis uindicari placuit: humiliores uero aut in crucem tolluntur aut bestiis subiciuntur.

VIII. 5, 1 Paulus libro sententiarum quinto sub titulo ad legem Corneliam testamentariam:

Qui ob falsum testimonium perhibendum [uel uerum non perhibendum] pecuniam acceperit dederit, iudicemue ut sententiam ferat uel non ferat corruperit corrupendumue curauerit, humiliores capite puniuntur, honestiores publicatis bonis cum ipso iudice in insulam deportantur.

VIII. 6, 1 Idem eodem libro et titulo:

Falsum est quidquid in ueritate non est, sed pro uero adseueratur.

VIII. 7, 1 Ulpianus libro octauo [de officio proconsulis] sub titulo de poena legis Corneliae testamentariae:

Praeterea factum est senatusconsultum Statilio et Tauro consulibus, quo poena legis Corneliae inrogatur ei, qui quid aliud quam testamentum sciens [dolo malo falsum] signauerit signariue

c. 3 = *Paulus* v. 15, 5 and *Dig.* xxii., 5, 16.

c. 4 = *Paulus* v. 23, 1, and above in the *Collatio*, title i. chap. 2.

c. 5 = *Paulus* v. 25, 2.

c. 6. *Paulus* v. 25, 3 is restored from this passage.

c. 7, 1 poena *till* coierint = *Dig.* xlviii. 10, 9, § 3.

Lines 1-2. *De quaestionibus*, i.e. putting to the torture, to elicit evidence. *Paulus* v. 14, *de quaestionibus adhibendis* is followed by *de testibus* (v. 15). Here the two titles are quoted jointly.

Line 3. *Uel uarie*. Huschke, following Pithou, emends the MS. reading *aliqua* into *oblique*, i.e., falsehood by suggestion.

Line 17—p. 100, line 10. Cp. for chap. 5-7, *Digest* xlviii. 10, l. 1, *pr.* §§ 1, 2, *ibid.* ll. 20, 21.

Line 17. *Uel uerum non perhibendum* supplied from *Paulus*.

Paulus, in the Fifth Book of The Sentences, under the title
“Of Witnesses and Putting to the Question”:

Those persons who have testified falsely, varied their evidence, or betrayed it to either side, are sentenced to exile or deportation to an island, or removal from their position as senators.

The same author, in the [Fifth] Book [of The Sentences], under the [title] “On the *Lex Cornelia* concerning Assassins and Poisoners”:

The *Lex Cornelia* inflicts the punishment of deportation on one who has killed a man, gone about armed for that purpose or in order to commit a theft, sold or prepared poison to kill a man, given false evidence to compass another's death, or in any other way caused death.

All these crimes are now, according to settled practice, visited with capital punishment, if the perpetrators are members of the higher classes. If they belong to the lower orders, they are crucified or cast to the wild beasts.

Paulus, in the Fifth Book of The Sentences, under the title
“On the *Lex Cornelia Testamentaria*”:

Whoever has taken or given money in order to procure false testimony or the withholding of true testimony, or has corrupted a judge or procured his corruption so as to induce him to give or withhold a verdict,—all these, if they belong to the lower classes, shall suffer capital punishment; if to the better classes, confiscation of their property and, together with the corrupt judge, deportation to an island.

The same jurist, in the same book and title: False is that which is not true and yet asserted to be true.

Ulpian, in the Eighth Book [of the Proconsular Functions] under the title “Of the Penalty for infringing the *Lex Cornelia Testamentaria*”:

A *Senatusconsultum* was furthermore passed in the Consulship of Statilius and Taurus, by which the penalty prescribed in the *Lex Cornelia* is inflicted upon anyone who fraudulently signs, or procures to be signed, any document other than a will which he knows to be false, also upon those who

PAGE 98, line 27. *Statilio et Tauro*. Huschke accepts Pithou's emendation *Statilio Tauro et (Scribonio Libone)*. The consulship of Statilius Taurus and Scribonius Libo was in the year 16 C.E.

curauerit, item qui ad falsas testationes faciendas testamentauae
falsa inuicem dicenda aut consignanda dolo malo coierint,
VIII. 7, 2. Licinio V et Tauro cons. item qui ob instruendam aduocatio-
nem testimoniae pecuniam acceperit pactusue fuerit societa-
tem[ue] coierit aut aliquam de ea [re pac]tionem interposuerit, 5
item si quis coierit ad accusationem innocentium senatus consulto
3 quod Cotta et Messalla factum est coercetur. sed et si quis ob
denuntiandum uel non denuntiandum remittendumue testimonium
pecuniam acceperit, senatus consulto quod duobus Geminis cons.
factum est poena legis Corneliae adficitur. et reliqua. 10

(TITVLVS VIII.)

DE FAMILIARIS TESTIMONIO NON ADMITTENDO.

IX. 1, 1 Item Moyses :
Falsum testimonium non dabis aduersus proximum tuum.
2, 1 Vlpianus libro VIII de officio proconsulis [sub titulo] ad 15
legem Iuliam de ui publica et priuata :
Eadem lege quibusdam testimonium omnino, quibusdam
interdicitur inuitis capite octogesimo septimo et capite octogesimo
2, 2 octauo. [capite octogesimo octauo] in haec uerba his hominibus :
'Hac lege in reum testimonium dicere ne liceto, qui se ab eo 20
parenteue eius libertoue cuius eorum libertiue libertaue liberauerit,

c. 2, 2. This chapter of the *Lex Julia* is quoted by *Callistratus*, *Dig.* xxii. 5, 3, with the following omissions: page 100, line 21, libertoue — libertaue, page 102, line 3, quique d. c. a. erit and page 102, lines 4-5. praeterquam . . . missus est erit.

Line 3. *Licinio V. et Tauro Cons.*; this is only found in the Berlin MS. Mommsen gives the date as 44 c.e., in the Consulship of *Vinicius* (2nd year), and of *Taurus*. Huschke thinks that the phrase, *Licinio V. et Tauro cons.*, belongs to the beginning of the chapter where originally it was written *Statilio Tauro et Scribonio Libone consulibus*. The copyist, accustomed to seeing consuls designated by single names only, wrote in the text *Statilio et Tauro*, interpreted *Scribonio* as *Scribe Ibonio*; noted it in the margin as a correction *L (=lege) Ibonio, u (= uel) Libone, et Tauro cons.* Another scribe turned this into *Licinio V. et Tauro Cons.*

Line 6. *Accusationem*, as corrected by Pithou. Cp. *Digest* xlvii. 13, l. 2, *qui in accusationem coierint*. Mommsen approves, but reads with the MSS. *occisionem*, which is very doubtful.

Line 7. *Cotta et Messalla*, 20 c.e. Cp. for this rule *Digest* xlvii. 13, l. 2.

Line 9. *Duobus Geminis cons.*, 29 c.e.

Lines 7-10. For this rule, cp. *Digest* xlvii. 13, l. 1 and 2, and *ibid.* xlviii. 10, l. 1 § 2.

Line 12. *De [Familiaris Testimonio non admittendo]*. The Berlin MS. has this superscription, beginning the next title with the word *Decimo*. The subject matter differs from that of the previous title. It is headed by a Scriptural text, and it is most probably an independent title. The arguments against this view are that it commences with the word *item*, and that the previous title has, in our MSS., no subscription.

Line 14. *Exod. xx. 16*: Thou shalt not bear false witness against thy neighbour.

have conspired to concoct false evidence, or declare, or sign false wills, on each other's behalf; in the Consulship of Licinus, the fifth year, and of Taurus.

Furthermore, whoever has taken money for legal advice or evidence, entered into a contract, partnership or any other compact for this purpose, or engaged in a conspiracy to accuse the innocent, will be punished under the *Senatusconsultum* issued in the Consulship of Cotta and Messalla.

Furthermore, if one has taken money to denounce or refrain from denouncing another, or withhold testimony, he will, in accordance with the *Senatusconsultum* passed in the Consulship of the two Gemini, suffer the penalty of the *Lex Cornelia*, etc.

NINTH TITLE.

"OF EXCLUDING THE TESTIMONY OF RELATIVES."

Likewise Moses :

"Thou shalt not give false witness against thy neighbour."

Ulpian, in the Ninth Book of The Pro-consular Functions, under the Title "On the *Lex Julia de vi publica et priuata*":

In the eighty-seventh and eighty-eighth chapters of this law, it is laid down that, under this law, some classes are altogether inhibited from giving evidence; others, if they are unwilling to do so.

The eighty-eighth chapter refers to these persons in the following terms: Under this statute, the following persons may not give evidence against a party to a suit: One who shall have emancipated himself from the said party; from his ascendant; from the freedman of either of them, or from the freedman's freedman, or from the freedwoman [of any of the foregoing]; or who shall be under the age of puberty; or shall have [been convicted in criminal trial and] not been restored to his previous status, or

PAGE 100, line 15. *Libro viii.*; Huschke gives xi. Is this a misprint for ix? Cujas, relying on *Digest* xxii. 5, l. 19, corrects viii.

Line 16. *De vi publica et priuata*. For definition, see Justinian's Institutes, iv. 15, 6, and Gaius iv. 155.

Line 19. *His hominibus*. According to Huschke, these words begin the quotation "The following persons are, under this statute, not permitted to give evidence."

Line 20. *reum* strictly "defendant," here "a party to a suit."

quiue inpubes erit, quiue [iudicio publico damnatus est, qui]
eorum in integrum restitutus non est, quiue in uinculis custodiaeque
publica erit, quiue depugnandi causa auctoratus erit, quiue ad
bestias depugnare se locauit locauerit, praeterquam qui iaculandi
causa ad urbem missus est erit, palamue corpore quaestum faciet
feceritue, quiue ob testimonium dicendum [uel non dicendum]
pecuniam accepisse iudicatus erit. nec uo[lens] quis eorum hac
IX. 2, 3 lege in reum testimonium dicit. capite octogesimo septimo his:
'inuiti in reum testimonium ne dicunto qui sobrinus est ei reo
propioreue cognatione coniunctus, quiue socer gener uitricus
priuignusue eius erit.' et reliqua.

IX. 3, 1 Paulus libro sententiarum [V] sub titulo de testibus et
quaestionibus:

Suspectos testes et eos uel maxime, quos accusator de domo
eduxit uel uitae humilitas infamauerit, interrogari non placuit: 15
2 in testibus enim et uitae qualitas spectari debet et dignitas. in
adfinem uel cognatum inuiti testes interrogari non possunt.
3 aduersus se inuicem parentes et liberi itemque [patroni et] liberti
nec uolentes ad testimonium admittendi sunt, quia rei uerae
testimonium necessitudo personarum plerumque corrumpit. 20

(TITVLVS X.)

DE DEPOSITO.

X. 1, 1 Moyses dicit:

Si aliquis dabit proximo suo argentum aut uas seruare et
furatum fuerit de domo hominis, si inuenitur qui furatus est, 25
reddet duplum. quod si non fuerit inuentus fur, accedet is qui
commendatum suscepit ante dominum et iurabit nihil se
nequiter egisse de omni re commendata proximi sui et liberabitur.

c. 2, 3. This chapter of the *Lex Julia* is quoted by Paulus, *Dig.* xxii., 5, 4.

c. 3 = Paulus v., 15, 1-3.

Line 4. *Locauit, locauerit*, so in the MSS. Huschke prefers *locabit, locauerit*, on the analogy of *faciet, feceritue* (lines 5, 6). The analogy in favour of the reading in the text is *missus est erit* (line 5).

Line 4. *iaculandi*, i.e., to exercise as a light-armed soldier.

Lines 12-13. *De testibus et quaestionibus*. The passage that follows is from the title *de testibus*. As this title (v. 15) is preceded by the title *de quaestionibus habendis* and succeeded by the title *de seruorum quaestionibus*, the Collatio gives the reference as *de testibus et quaestionibus*.

Line 14. *Suspectos*. After this word, Huschke supplies from Paulus *gratiae*.

Lines 24-28. Exod. xxii. 7, 8, 11: If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen out of the man's house; if the thief be found, let him pay double.

shall serve as a convict in chains or in public custody; or shall have engaged himself as a gladiator; or shall have hired himself or shall do so, to fight with wild beasts, but not if he shall have been or shall be sent to the city "to throw javelins"; or one who for profit shall act or shall have acted as a public performer; or anyone who shall have been found guilty of accepting money for giving [or withholding] evidence;—none of the above classes may, according to this statute, give evidence against a party to a suit, even if they are willing to do so.

In the eighty-seventh chapter [such persons are referred to] in these terms: "Let not the following give evidence against their will against a party to a suit: a cousin or nearer relative to the party; his father-in-law, son-in-law, stepfather, stepson," etc.

Paulus, in the [Fifth] Book of the Sentences, under the Title "Of Witnesses and Questions":

It is settled that witnesses suspected of partiality, especially those whom the accuser brings from his own home, or whose degraded life has made them infamous, are not examined; for, in regard to witnesses, we must look both to the character of their lives and to their rank.

Witnesses cannot be compelled to give evidence against a relative by marriage or blood.

Parents and children, patrons and their freedmen, are not to be admitted as witnesses against each other, even if they are willing, because the close relationship of the parties usually vitiates their evidence.

TENTH TITLE.

"OF DEPOSIT."

Moses says:

"If a man shall give to his neighbour silver or a vessel to keep, and it shall have been stolen from the man's house, if the thief is found, he shall pay double; if the thief shall not be found, then he who had undertaken the charge shall come nigh before the Lord, and shall swear that he has not acted iniquitously in respect of anything which his neighbour had entrusted to him, and he shall be set free."

PAGE 102 (*cont.*) If the thief be not found, then the master of the house shall be brought unto the judges, to see whether he hath put his hand unto his neighbour's goods.....

Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof, and he shall not make it good. The text in the Collatio is a condensed summary of Ex. xxii. 7-11. The word כְּלִים rendered in the A.V. "stuff," means utensils or, in later Hebrew, garments.

Line 24. *uas*; Huschke has *suos*.

X. 2, 1 Modestinus libro differentiarum secundo [sub titulo] de deposito et commodato :

Commodati iudicio conuentus et culpam praestare cogitur : qui uero depositi conuenitur, de dolo, non etiam de culpa condemnandus est. commodati enim contractu, quia utriusque contrahentis utilitas interuenit, utrumque praestatur : in depositi uero causa sola deponentis utilitas uertitur et ibi dolus tantum praestatur. sed in ceteris quoque partibus iuris ista regula custoditur : sic enim et in fiducia iudicium et in actionem rei uxoriae dolus et culpa deducitur, quia utriusque contrahentis utilitas interuenit. in mandati uero iudicium dolus, non etiam culpa deducitur. quamuis singulariter denotare liceat in tutelae iudicium utrumque deduci, cum solius pupilli, non etiam tutoris utilitas in administratione uersetur. depositi damnatus infamis est : qui uero commodati damnatur, non fit infamis : alter enim propter dolum, alter propter culpam condemnatur. actione depositi conuentus cibariorum nomine apud eundem iudicem utiliter experitur : at is cui res commodata est inprobe cibariorum exactionem intendit. inpensas tamen necessarias iure persequitur, quas forte in aegrum uel alias laborantem inpenderit. res deposita si subripiatur, dominus dumtaxat habet furti actionem, quamuis eius apud quem res deposita est intersit ob inpensas in rem factas rem retinere. is uero cui res commodata est furti experiri debet, si modo soluendo fuerit. actio commodati semper in simplum competit, depositi uero nonnumquam in duplum, scilicet si ruinae uel naufragii uel incendii aut tumultus causa res deponatur.

c. 2, 5. to experitur = Dig. xvi. 3, 23.

Line 2. *Et commodato*, with Cujas and Huschke. Mommsen retains *uel commendato* from the MSS., which may be explained as an interpretation of *Deposito*.

Lines 5-6. *Utriusque contrahentis utilitas*. The owner has his goods in safe custody, the borrower the advantage of their use. Cp. *Digest* xiii. 6, l. 5, § 2; *ibid.* l. 17, l. 23.

Line 17. *Depositum*. Huschke inserts *serui* after *depositi*, and accordingly reads in line 18 *seruus commodatus*, instead of *res commodata*. The counter-claim for cost of keep can, indeed, apply to other deposits than slaves. But *aegrum uel alias laborantem* (line 20) clearly refers to the slave.

Lines 20-23. *Res deposita.....retinere*. Cp. Gaius iii. 207: "As the depositary is not answerable for the safe keeping of the thing deposited, but only for fraud, and, if it is stolen, is not compellable to make restitution by action of deposit, he is not interested in its loss; and, therefore, the action of theft is only maintainable by the depositor."

Lines 23-24. *Is uero.....fuerit*. The borrower for use is responsible for the safe keeping of the article borrowed, and has to pay compensation if it is stolen. Hence he can bring an action of theft. Cp. *Digest* xlvii. 2, l. 14 *fin. nam his damus furti actionem si sint soluendo quoniam periculum rerum ad eos pertinet*.

Lines 25-27. *Depositum.....deponatur*. Cp. *Digest* xvi. 3, l. 1, § 1 and *ibid.* l. 18.

Modestinus, in the Second Book of "The Distinctions," [under the Title] "Of Deposit and Loan for Use":

Anyone sued in an action of loan for use is compelled to make good a loss, even if it arise from negligence. But in an action of deposit, the defendant is only to be condemned for fraud, but not for negligence. For, in a contract of loan for use, as both parties benefit, there is a liability to make good a loss arising from either cause. But in the case of deposit, the depositor has the sole advantage, and therefore only losses arising from fraud are made good. This rule is also observed in other parts of the Law. Thus, in an action for trust and in an action *rei uxoriae*, negligence as well as fraud is taken into account, because both parties to the contract benefit. In an action of agency, fraud alone and not negligence also, is taken into account, though we may note the anomaly that in an action of guardianship both negligence and fraud are taken into account, notwithstanding that guardianship is exclusively for the benefit of the ward and not for that of his guardian. A person condemned in an action of deposit is infamous; one condemned in an action of loan for use does not become infamous. For the former is condemned for fraud, the latter for negligence. Anyone sued in an action of deposit can counterclaim before the same judge for cost of keep. But the borrower for use cannot justly claim the cost for keep. He can, however, sue for necessary disbursements, which he has, for instance, laid out on [a slave] when ill or otherwise distressed.

If the thing deposited has been stolen, only the owner can bring an action for theft, though the depositary has an interest in the detention of the deposit for his outlays on it. But it is the borrower for use who must sue for theft, provided he is solvent. In an action of loan for use, the claim is always for the value of the article lent; but in one of deposit, twice the value is sometimes claimed, namely, if the article has been deposited in consequence of the collapse of a house, shipwreck, conflagration or riot.

Hermogenian, under the Title "Of Deposit," inserts in his Code the following Constitutions:

The same Emperors to Flavius Munatius. It is undoubtedly the law that one who has undertaken the care of a deposit has to make good any loss arising from his fraud, but not loss due to accident. As, according to your statement, certain of the things entrusted to you were destroyed by fire, and there was no fraudulent

X. 3, 1 Hermogenianus sub titulo depositi huiusmodi inserit constitutiones :

Idem Augg. [et] Caess. Fl. Munatio. Eum qui suscepit depositum dolum, non etiam casum praestare certi iuris est. cum itaque proponas ignis ui quaedam cremata de his quae tibi fuere 5 commendata nec ullum dolum in subtrahendis rebus adhibitum, rector prouinciae nihil contra iuris rationem fieri patietur. et quoniam necti quereris moras adhibita uarietate, negotium inter uos ortum secundum iuris ordinem sua ratione decidetur.

a. 293 Subscripta VIII k. Iul. Serdica Augustis consss. 10

X. 4, 1 Idem Augg. et Caess. Fl. Aurelio Altenico Andronico. Eos penes quos uestem et argenti materiam deposuisse proponis apud rectorem prouinciae conuenit interrogari, qui eos, siue teneant siue dolo fecerint quominus possint restituere, secundum bonam fidem tibi satisfacere compellet. Subscripta VI. k. April. Sirmi 15

a. 294 Caess. consss.

X. 5, 1 Idem Augg. et Caess. Aurelio et Eustathio et Diosimo. Is, qui depositum suscepit, ultra dolum, si non aliud specialiter conuenit, praestare nihil necesse habet. cuius memor iuris rector prouinciae partium allegationibus auditis pro repertorum 20 qualitate suam ordinabit sententiam. Subscripta XIII k. Nou.

a. 294? Appiaria.

X. 6, 1 Idem Augg. et Caess. Septimiae Quadratillae. Qui dolo malo depositum non restituit, suo nomine conuentus ad eius restitutionem cum infamiae periculo urguetur. Subscripta prid. idus 25

a. 294 Decembres Nicomedia, CC. consss.

X. 7, 1 Paulus libro secundo sententiarum sub titulo de deposito :

Deponere possumus apud alium id quod nostri iuris est uel 2 alieni. depositum est quasi diu positum. seruandum est, quod 3 [ad] breue tempus custodiendum datur. deponere uidetur, qui 30 in metu ruinae incendii naufragii apud alium custodiae causa

c. 5 = *Cod. Inst.* iv. 34, 10.

c. 7, 1-4. *Paulus* ii. 17. 1-4 is restored from this passage.

Line 3: *Augg. [et] Caess.* here, and also below, in the superscriptions to chaps. 4, 5 and 6, refer to Diocletian and Maximian. See Hermogenian Code, Title xiii., *de deposito* (Haenel's edition, p. 74), where the same superscriptions are given, and where in Title xii. the superscription is *Impp. Diocletianus et Maximianus*.

Lines 7-9. *Et quoniam.....decidetur.* Flavius Munatius apparently had a claim against a depositor. The depositor refused to satisfy this claim on the ground that he had a counter-claim for the articles he had deposited, some of which had got burnt. The subject of the counter-claim was quite foreign to that of the claim: hence the petitioner's plaint and the Emperor's answer.

Line 20. *Repertorum*, with Huschke. Mommsen retains *ereptorum*, as in the MSS.

abstraction of them, the Governor of the Province will not permit anything to be done contrary to the principles of the law. And since you complain that delays are being devised by the introduction of extraneous matters, the case that has arisen between you both shall be decided in the ordinary course of the law on its own merits. 23rd June, at Serdica, in the Consulship of the Emperors.

The same Emperors to Flavius Aurelius Altenicus Andronicus. Those with whom you say you have deposited a garment and a quantity of silver should be examined before the governor of the Province, who will compel them to meet your claim equitably, whether they still hold the deposit or have fraudulently put it out of their power to restore it. 27th March, at Sirmium. The Emperors.

The same Emperors to Aurelius, Eustathius and Diosimus. Unless there is a special covenant, the depositary is not under the necessity of making good losses beyond those arising out of fraud. The Governor of the Province will, when hearing the statements of the parties, bear this principle in mind, and frame his decision in accordance with the findings. 19th October, at Appiaria.

The same Emperors to Septimia Quadratilla. A depositary who fraudulently fails to restore an article, on being sued in an action of deposit, is forced to make restitution, and, at the same time, is liable to be declared infamous. 12th December, at Nicomedia. The Emperors.

Paulus, in the Second Book of The Sentences, under the Title
"Of Deposit":

We can deposit with another an article that belongs to us or to a third party.

Depositum is equivalent to *diu positum* [placed for a long time.] A thing given to be taken care of for a brief period is said to be kept.

It is a deposit when a thing is placed in another's charge for safety's sake, owing to apprehension caused by the fall of a house, fire or shipwreck.

PAGE 106, line 22. *Appiaria*. *Caess. cons.* should be added both here and in the Hermogenian Code.

Lines 23-26. Hermogenian Code xiii. 4; Justinian's Code iv. 34, l. 10.

Line 28. *Uel alieni*. A thief who deposits property of another person with a third party can sue in an action of deposit. *Digest* v. 1, l. 64 *pr.*; *ibid.* xvi. 3, l. 1, § 39; l. 31 *fin.*

Line 29. *diu positum*. But compare for another explanation *Digest* xvi. 3, l. 1 *pr.*: *Depositum est quod custodiendum alieni datum est, dictum ex eo quod ponitur; praepositio enim de auget positum, ut ostendat totum fidei eius commissum quod ad custodiam rei pertinet.*

Line 31. *In metu ruinae incendii naufragii*. See above, chap. 2, § 7, for *miserabile depositum*.

X. 7, 4 deponit. deponere uidetur et is, qui suspectam habens uel minus idoneam custodiam domus uel uim latronum timens apud aliquem rem custodiendam commendat. si sacculum uel argentum [signatum] deposuero et is penes quem depositum fuit me inuito 5 contrectauit, et depositi et furti actio mihi in eum competit. ob 5 7 res depositas dolus tantum praestari solet. in iudicio depositi ex 8 mora et fructus ueniunt et usurae rei depositae praestantur. si quis rem penes se depositam apud alium deposuerit, tam ipse directam quam is qui apud eum deposuit utilem actionem depositi 9 habere possunt. si pecuniam deposuero eaque uti tibi permisero, 10 mutua magis uidetur quam deposita ac per hoc periculo tuo erit. 11 si rem apud te depositam uendideris eamque redemeris, post perdideris, semel admissio dolo perpetua depositi actione teneberis. ex causa depositi lege duodecim tabularum in duplum actio datur, edicto praetoris in simplum. 15

X. 8, 1 Gregorianus libro IIII sub titulo de deposito :

Imp. Alexander A. Mestrio militi. Incursu latronum ornamenta deposita apud interfectum ab eis perierunt : detrimentum ad heredes eius qui depositum accepit, qui dolum tantum praestare debuit, non pertinet. quod si praetextu latrocinii commissi 20 res, quae in potestate heredis sunt, non restituuntur, tam depositi quam [ad] exhibendum actio, sed et in rem uindicatio competit. Prop. VII kal. Iul. Maximo bis et Urbano consss.

a. 234

X. 9, 1 Paulus libro responsorum V sub titulo ex locato et conducto :

25

‘Imp. Antoninus Iulio Agrippino. Dominus horreorum

c. 7, 5 = *Paulus* ii. 12, 5 ; *Dig.* xvi. 3, 29 *pr.*

c. 7. 6-11. *Paulus* ii. 12, 6-11 is restored from this passage.

c. 8 = *Cod. Iust.* iv. 34, 1.

c. 9 = *Cod. Iust.* iv. 65, 1.

Lines 3-4. *Sacculum uel argentum (signatum)*. According to Dirksen's *Manuale*, *argentum signatum* means silver coins, money. But Mommsen well explains that *signatum* is equal to *obsignatum* ; the phrase would mean : "A purse, or money in a sealed package."

Lines 5-6. *Ob res.....solet*. Cp. above, chap. 2, § 1.

Lines 6-7. *In iudicio.....praestantur*. Cp. *Digest* xvi. 3, l. 1, § 24 ; *ibid.* l. 25, § 1, and *ibid.* l. 29, § 1 ; Cp. Justinian's Code iv. 34, l. 2.

Lines 8-9. *Ipse directam*. Cp. *Digest* xvi. 3, l. 1, § 11.

Line 9. *Utilem actionem*. Cp. Justinian's Code iii. 42, l. 8.

Line 10. *Eaque uti*. With Blume, after comparison of *Digest* xii. 1, l. 4, *pr.* ; *ibid.* l. 9, § 9 and l. 10. Mommsen has *eamque*.

Lines 10-11. *Si pecuniam.....tuo erit*. Cp. *Digest* xii. 1, l. 9, § 9.

Line 13. *Perpetua*. Huschke prefers *perpetuata* on the strength of the verbal form in *Digest* xlv. 1, l. 91, § 3 and xlvii. 1, l. 58, § 1.

It is also a deposit when a thing is entrusted to another to be taken care of, because the owner is suspicious or ill-assured of the safety of his house, or fears an attack of robbers.

If I have deposited a purse or silver [sealed up], and the depositary has laid hands on it against my wish, I will be able to sue him for deposit as well as for theft.

In an action of deposit, damages are given for fraud.

In an action of deposit, profit and interest on the value of the article deposited will, where there has been delay [in restitution], have to be paid.

If a person deposits the article entrusted to him with a third party, the first depositary will have a direct, the original depositor an indirect, action of deposit.

If I have deposited with you money which I have given you permission to use, it is regarded as a loan rather than as a deposit, and consequently its loss will be at your risk.

If you sold the thing deposited with you and then bought it back and subsequently lost it, you will, once having committed a fraud, be liable in an action of deposit that can always be brought.

In an action of deposit, the Law of the Twelve Tables allows a claim for twice the value of the article deposited; the Prætor's Edict, for the single value only.

Gregorian, in the Fourth Book, under the Title "Of Deposit."

The Emperor Alexander to Mestrius, a soldier. In an attack by robbers, a man was killed, and ornaments deposited with him were destroyed. The loss will not fall on the heirs of the one who accepted the deposit, since he was only liable to make good losses due to his fraud. But if, under the pretext that a robbery had taken place, articles which are in the heir's possession are not restored, the owners will be entitled to actions of deposit and for production, as well as to a *vindicatio* for the thing itself. Issued 25th June, in the Consulship of Maximus (the second year) and Urban.

Paulus, in the Fifth Book of the Responses, under the Title "Of Hiring and Letting."

The Emperor Antoninus to Julius Agrippinus. The owner of

PAGE 108, line 13. *Depositi actione*. Cp. *Digest* xvi. 3, l. 1, § 25.

Line 15. *In simplum*. Cp. Gaius iv. 47. Where the *depositum* was *miserabile*, the claim, even by the prætor's edict, was for double damages. See above, in this title, chap. 2, § 7 and *Digest* xvi. 3, l. 18.

Lines 16-23. The Gregorian Code (Haenel's edition), iv. 3. Whether the additions in Justinian's Code are due to Tribonian or have been left out of the Collatio is doubtful.

MOSAICARUM ET ROMANARUM

- periculum uis maioris uel effracturae latronum praestare non cogitur. his cessantibus si quid ex depositis rebus inlaesis extrinsecus horreis perit, damnum depositorum sarciri debet.
- a. 213 Prop. IIII non. Nou. Antonino IIII cons.' Paulus respondit: satis praepositam constitutionem declarare his, qui horrea locant, 5 maiorem uim inputari non posse.

(TITVLVS XI.)

DE ABACTORIBVS.

- XI 1, 1 Moyses dicit :

Si quis inuolauerit uitulum aut ouem et occiderit aut 10 uendiderit, quinque uitulos restituet pro uitulo uno, quattuor 2 oues pro oue una. quod si non habet unde reddat, uenundetur pro furto.

- XI. 2, 1 Paulus libro sententiarum V sub titulo de abactoribus :

Atroces pecorum abactores plerumque ad gladium uel in 15 metallum, nonnumquam autem in opus publicum dantur. atroces autem sunt, qui equos et greges ouium de stabulo uel de pascuis abigunt uel si id saepius aut ferro aut conducta manu faciunt.

- XI. 3, 1 Idem Paulus eodem libro et titulo :

Abactores sunt, qui unum equum uel duas equas totidemque 20 boues, [oues] uel capras decem, porcos quinque abegerint. quidquid uero intra hunc numerum fuerit ablatum, in poena furti pro qualitate eius aut in duplum aut in triplum conuenitur aut fustibus caesus in opus publicum unius anni datur aut sub poena uinculorum domino restituetur.

25

c. 2. From this passage, Paulus v. 18, 2 is restored.

c. 3 = Paulus v. 18, 1.

Line 1. *Latronum*; after this word, Huschke supplies from Justinian's Code *conductori*. The rescript cannot refer to the case of a depositary, for he is not liable for negligence, unless the passage means that the Emperor inferred from the uninjured condition of the premises that the depositary's plea of *force majeure* was fraudulent. Possibly the words *depositis* (line 2) and *depositorum* (line 3) should not be pressed, and the case be taken as one of *locatio*.

Lines 4-6. *Paulus respondit.....non posse*. This is of course not found in Justinian's Code iv. 65, l. 1.

Lines 10-13. Exod. xxii. 1 and conclusion of 3: If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep.....if he have nothing, then he shall be sold for his theft.

Line 15. *Ad gladium*: i.e., to fight in the arena with wild beasts, but armed with a sword. See, however, below in this title, chap. vii., § 3, that there was a doubt as to the precise degree of severity of this punishment.

Lines 15-16. *Atroces.....dantur*. Cp. *Digest* xlvii. 14, l. 1 *pr.* and § 3, *ibid.* l. 2.

storehouses is not bound to make good the loss arising from *force majeure*, or the breaking in of robbers. But where such circumstances are absent, and deposits have been destroyed without any injury to the exterior of the store-houses, the loss of the deposits must be made good. Issued 2nd November, in the fourth year of the Emperor Antoninus.

Paulus wrote in a Response that the foregoing Constitution makes it clear that those who let storehouses cannot be made responsible for *force majeure*.

TITLE XI.

"OF CATTLE-RAIDERS."

Moses says :

"If anyone steal a calf or sheep, and kills or sells it, he shall restore five calves for one calf, four sheep for one sheep. But if he have not the means to repay, he shall be sold for the theft."

Paulus, in the Fifth Book of the Sentences, under the title "Of Cattle-raiders" :

Hardened cattle-raiders are generally given up to the sword, or sent to the mines; sometimes, however, they are sent to the public works. They are regarded as hardened when they take horses from the stable, flocks of sheep from the fold, or either from the pastures: whether they do this repeatedly, or (even on a single occasion) with arms or accompanied by a band of men.

The same Paulus, in the same book and title :

Cattle-raiders are those who have taken away one horse or two mares, the same respective numbers of large-horned cattle, ten sheep or she-goats, or five swine. If a smaller number has been taken, the raider is sued for theft for double or threefold damages according to the character of the theft, or is sentenced to a flogging, followed by a year's labour on the public works; or [if a slave] is restored to the master but has to wear chains.

PAGE 110, lines 20-21. *Totidemque boues*; i.e., one ox or two cows. Cp. *Digest* xlvii. 14, l. 3 *pr.*

Line 21. [*Oves*] as given in *Digest* xlvii. 14, l. 3, *pr.*

Line 23. *Triplum*; Huschke prefers *quadruplum*. A thief taken in the act had to pay fourfold; not taken in the act, twofold. Whether the offence for which the penalty was threefold could properly be called Theft was doubted. Cp. Justinian's Institutes iv. 1, 3; Gaius, iii. 183.

Line 24. *Aut sub poena*; Huschke supplies after *aut* (*seruus*). This co-relative may, however, be understood from *domino*.

MOSAICĀRUM ET ROMANARUM

- XI. 4, 1 Idem Paulus eodem libro et titulo :
 Si ea pecora, de quibus quis litigauerat, abegerit, ad forum remittendus est atque ita conuictus in duplum uel in triplum furis more damnatur.
- XI. 5, 1 Idem Paulus eodem libro et titulo : 5
 Qui bouem uel equum errantem quodue aliud pecus abduxerit, furem magis eum quam abactorem constitui placuit.
- XI. 6, 1 Paulus libro singulari de poenis paganorum sub titulo de abigeis dixit :
 Cum durius abigei damnantur, et ad gladium traduntur : 10
 2 itaque diuus Pius ad concilium Baeticae rescripsit. qui pecora, de quibus litigabat, abegit, ad forum remittendus est et si uictus fuerit, in duplum uel quadruplum condemnandus.
- XI. 7, 1 Ulpianus libro octauo de officio proconsulis sub titulo de abigeis : 15
 De abigeis puniendis ita diuus Hadrianus rescripsit concilio Baeticae : ' Abigei cum durissime puniuntur, ad gladium damnari solent. puniuntur autem durissime non ubique, sed ubi frequentius est hoc genus maleficii : alioquin et in opus et 20
 2 nonnumquam temporarium damnantur. ideoque puto apud uos quoque sufficere genus poenae, quod maximum huic maleficio inrogari solet, ut ad gladium abigei dentur : aut si quis tam notus et tam grauis in abigendo fuit, ut prius ex hoc crimine aliqua
 3 poena affectus sit, hunc in metallum dari oportere.' rescriptum diui Hadriani sic loquitur, quasi grauior poena sit metalli : nisi 25
 4 damnationem. est autem differentia inter eos qui ad gladium et eos qui ad ludum damnantur : nam ad gladium damnati confestim consumuntur uel certe intra annum debent

c. 4 = *Paulus* v. 18, 3.

c. 5. *From this passage Paulus* v. 18, 4, *is restored.*

c. 7, 1 = *ig.* xlvii. 14. 1 *pr.*

Lines 2-3. *Ad forum remittendus.* Cp. above, title vii. 4, § 1.

Lines 2-4. See below, chap. 6, § 2. Note line 3. *triplum*, for which Huschke prefers *quadruplum* as below in line 13.

Lines 6-7. *Qui bouem.....placuit.* Cp. *Digest*, xlvii. 14, l. 1, § 1.

Line 10. *Ad gladium.* See above, chap. 2, 1, and the note as to explanation, and Cp. below chap. 7, 1-4.

Traduntur. With Schulting. Mommsen follows the MSS. and editors, and reads *tradantur*.

Lines 25-27. *Nisi forte.....damnationem.* Cp. Theodosian Code ix. 18, *Liber autem sub hac forma in ludum detur gladiatorium ut antequam aliquid faciat quo se defendere possit, gladio consumatur.*

LEGUM COLLATIO.

Paulus, in the same book and title :

If a litigant raids flocks which are the subject of his suit, he is to be sent for trial to the Civil Court; and, if there found guilty, is condemned, as a thief, to pay twice or thrice the value.

The same Paulus, in the same book and title :

To drive off a stray ox, horse or other cattle is, according to settled rule, treated as theft rather than cattle-raiding.

Paulus, in his single book "Concerning the Punishments of Peasants," under the title "Of Cattle-raiders":

When cattle-raiders are punished severely, they are even delivered to the sword. And so the late Emperor Antoninus Pius wrote in a rescript to the Council of Baetica.

A litigant who raids cattle, the subject of a suit, is to be sent for trial to the Civil Court, and, if found guilty, is to be condemned to pay twice or four times the value.

Ulpian, in the Eighth Book of The Proconsular Functions, under the title "Of Cattle-raiders":

The late Emperor Hadrian, in a rescript to the Council of Baetica concerning the punishment of cattle-raiders, wrote as follows :

When cattle-raiders are punished very severely, they are usually sentenced to "the sword." They are not, however, punished with extreme severity in all districts, but only where this class of offences is rampant; otherwise, they are condemned to labour in the public works; and that, sometimes, only for a limited period.

I am, accordingly, of the opinion that the highest penalty inflicted for this offence should suffice in your jurisdiction, and that the raiders should be sentenced to the sword; or, if anyone has been so notorious and persistent in raiding as to have been previously punished for this offence, he should be sent to the mines.

The terms of the Emperor Hadrian's rescript would imply that labour in the mines is the severer punishment. Unless, possibly, the Emperor Hadrian meant by the phrase "punishment of the sword" the gladiatorial games. There is, however, a distinction between those sentenced to the sword and those sentenced to the games; the former are despatched without delay, or at any rate ought to be despatched within a year, and this instruction is contained in the Orders. But those condemned

consumi: hoc enim mandatis continetur. enimvero qui in ludum damnantur, non utique consumuntur sed etiam pilleari et rudem accipere possunt post interuallum, siquidem post quinquennium pilleari, post triennium autem rudem induere eis permittitur.

XI. 7, 5 eodem rescripto diui Hadriani diligentissime expressum est non 5
ubique parem esse poenam abigeorum.

XI. 8, 1 Idem Ulpianus libro et titulo qui supra:

Abigei autem proprie hi habentur, qui pecora ex pastu et ex armentis subtrahunt et quodammodo depraedantur et abigendi studium quasi artem exercent equos de gregibus uel boues de 10 armentis abducentes. ceterum si quis bouem aberrantem uel equum [relictum] in solitudine abduxerit, non est abigeus, sed 2 fur potius. sed et qui porcum uel capram uel uerbecem abducunt, non tam grauiter ut hi qui maiora animalia abigunt plecti debent. 3 quamquam autem Hadrianus metalli poenam, [item] temporari 15 [operis] uel etiam gladii praestituerit, attamen qui honestiore loco nati sunt non debent ad hanc poenam pertinere, sed aut relegandi 4 erunt aut remouendi ordine. Romae tamen etiam bestiis subici abigeos uidemus: et sane qui cum gladio abigunt, non inique hac poena adficiuntur. 20

(TITVLVS XII.)

DE INCENDIARIIS.

XII. 1, 1 Moyses dicit: Si exierit ignis et inuenerit spinas et comprehenderit areas uel spicas aut campum, aestimationem restituet ille qui succendit ignem. 25

XII. 2, 1 Paulus libro sententiarum [quinto] sub titulo de incendiariis:

Qui casam aut uillam inimicitiarum gratia incenderunt, humiliores in metallum aut in opus publicum damnantur, 2 honestiores in insulam relegantur. fortuita incendia, quae casu uenti furentis uel incuria ignem supponentis ad usque uicini agros euadunt, si ex eo seges uel uineae uel oliuae uel fructiferae arbores concrementur, datum damnum aestimatione sarciatur.

c. 8 = *ig. xlvii. 14, 1-4.*

c. 2 = *Paulus (Vesont.) v. 20, 2, 3.*

Line 1. *Mandatis*, i.e. orders to the governor of a prison or director of the gladiatorial contests.

Line 9. *Abigendi* from *Digest*. Mommsen retains *abigei* from the MSS.

Line 12. *Relictum* supplied from the *Digest*, *Equos in solitudine relictos*. Mommsen omits, following the MSS.

Line 15. *Item temporari operis*. *Item* and *operis* are supported by the MSS. and *Digest*; but omitted by Mommsen. See above, chap. vii. § 1, for the terms of Hadrian's rescript: *in opus et nonnumquam temporarium damnantur*.

Lines 23-25. Exod. xxii. 6: If fire break out, and catch in thorns, so that the stacks of corn, or the standing corn, or the field be consumed therewith; he that kindled the fire shall make restitution.

to the games are not necessarily despatched; they may even, after a time, be restored to freedom, or be discharged from the obligation of being a gladiator; since, after five years, they may be restored to freedom, while, on the expiration of three years, they are permitted to receive their discharge from the gladiatorial games.

The same Rescript of the late Emperor Hadrian emphasizes the principle that the punishment of cattle-raiders is not in all places alike.

Ulpian, in book and under title as above :

Strictly speaking, those are regarded as cattle-raiders, who steal cattle from the pasture or the folds, making, so to speak, booty of them; and practise cattle-raiding as a profession, driving off horses from the droves or oxen from the herds. But if one drives off a stray ox or a solitary horse he is not a raider, but rather a thief.

Again, driving off a swine, goat or wether, ought not to be punished as severely as the raiding of larger beasts.

And though Hadrian prescribed labour in the mines, or on the public works, for a limited term, or even the sword as the penalty, offenders of the better classes should nevertheless not be subjected to such a punishment; they are either to be deported or degraded.

We see, however, that at Rome cattle-raiders are even flung to the wild beasts; a punishment which is not unjust for such as make armed raids on cattle.

TWELFTH TITLE.

“OF INCENDIARIES.”

Moses says: If a fire break out and come upon thorns and consume threshed-out corn, or standing corn, or a field, he who kindled the fire shall restore the value.

Paulus, in the (Fifth) Book of The Sentences, under the Title “Of Incendiaries” :

Those of the lower ranks, who, out of enmity, have set fire to a hut or country mansion are sentenced to the mines or public works: should they be of the better classes, to deportation to an island.

If, owing to an unexpected gale of wind, or the carelessness of the one who lit the fire, accidental conflagrations spread to a neighbour's lands, and, as a result, crops of corn, vines, olive-trees, or other fruit-bearing trees are burnt down, the damage caused must be assessed and made good.

PAGE 114, lines 27-29. *Qui casamrelegantur.* Cp. *Digest* xlviii. 19, l. 28, § 12.
 Lines 29-32. *Fortuita incendia.....sarciatur.* Cp. *Digest* ix. 2, l. 30, § 3.
 Line 31. *uineae.* Mommsen has *uinea.*

- XII. 3, 1 Idem Paulus eodem libro et titulo :
 Commissum uero seruorum, si domino uideatur, noxae
 2 deditione sarcitur. messium sane per dolum incensores[uel]uinea-
 rum oliuarumue aut in metallum humiliores damnantur aut
 honestiores in insulam relegantur. 5
- XII. 4, 1 Idem Paulus libro et titulo qui supra :
 Incendia, si qui in oppido praedandi causa faciunt, facile
 capite puniuntur.
- XII. 5, 1 Ulpianus libro octauo de officio proconsulis [sub titulo] de
 naufragis et incendiariis: 10
 Incendiariis lex quidem Cornelia aqua et igni interdicti iussit,
 sed re uarie sunt puniti. nam qui data opera in ciuitate incen-
 dium fecerunt, si humillimo loco sunt, bestiis subici solent, si in
 aliquo gradu et Romae id fecerunt, capite puniuntur : aut certe
 2 [deportationis poena]adficiendi sunt qui haec committunt. sed eis 15
 qui non data opera incendium fecerint plerumque ignoscitur, nisi
 in lata et incauta negligentia uel lasciuiia fuit.
- XII. 6, 1 Paulus libro singulari de poenis paganorum sub titulo de
 abigeis dicit :
 Incendia, si qui in oppido praedae causa admiserint, capite 20
 puniuntur : qui casu insulam aut uillam, non ex inimicitiiis incen-
 derint, leuius. fortuita enim incendia ad forum remittenda sunt,
 ut damnum uicinis sarciatur.
- XII. 7, 1 Ulpianus libro XVIII ad edictum, sub titulo si fatebitur iniuria
 occisum esse, in simplum et cum diceret : 25
 Item si insulam meam adusseris uel incenderis, Aquiliae
 actionem habeo, idemque est, et si arbustum meum uel uillam

c. 3 = Paulus (Vesont.) v. 20, 4, 5.

c. 4 = Paulus (Vesont.) v. 20, 1.

c. 7 = Dig. ix. 2, 27, 7 varied.

Line 3. [uel], with Huschke.

Line 7. *Incendia si qui*, with Huschke. Mommsen, following the MSS., reads *incendiarii qui quid*.

Lines 12-14. *Qui data.....aut certe*. This passage is found with some variations in *Digest* xlvii. 9, l. 12, § 1.

Line 15. [Deportationis poena.] The above passage from the *Digest* concludes *insulam deportantur*. I have, therefore, adopted Blume's suggestion to fill up the *lacuna* in the MSS., after *certe* and before *adficiendi*.

Lines 15-17. *Sed.....fuit*. Cp. *Digest* xlvii. 9, l. 11.

Line 19. *Abigeis*, evidently a mistake through thoughtless copying of the inscription to Title xi. 6, § 1. It should be *incendiariis*.

Line 20. *Incendia si qui*, with Huschke. Mommsen reads with the MSS., *incendiarii qui*, and *id* before *admiserint*.

Lines 20-23. Cp. above in this title chaps. 2 and 5 ; also *Digest* xlvii. 9, l. 9.

Line 22. *Ad forum remittenda*. Cp. above Title vii., chap. 4, § 1, and Title, xi chaps. 4 and 6.

Line 24. *Si fatebitur*. Cp. *Digest* ix. 2, l. 26.

The same Paulus, in the same Book and Title :

Damage caused by slaves may, at the master's discretion, be compensated by their noxal surrender.

Those who maliciously set fire to crops, vines or olive-trees are, if they are of lower rank, sentenced to the mines ; if of the better classes, to deportation to an island.

The same Paulus, in the same Book and Title as above :

Those who commit arson in a town for the purpose of plunder are, without hesitation, sentenced to death.

Ulpian, in the Eighth Book of the Proconsular Functions, [under the Title] "Of Shipwrecked Persons and Incendiaries" :

The Lex Cornelia ordered incendiaries to be interdicted from fire and water. In actual practice, however, the punishments are differentiated ; for those who have deliberately caused a fire in a city are, if of the lower classes, thrown to the wild beasts ; if they are of some standing and committed the offence at Rome, they suffer capital punishment, or, at least, deportation is inflicted on the perpetrators of such crimes.

But those who have caused a fire unintentionally, are generally pardoned unless there was gross and careless negligence or wantonness.

Paulus, in his Single Book "Concerning the Punishment of Peasants," under the Title "Of Cattle-raiders," says :

Persons who have committed arson in a town for the sake of plunder suffer capital punishment. But those who have set fire to a tenement-house or country seat accidentally, and not out of malice, are dealt with more leniently. Cases of accidental conflagration are to be sent to the Civil Court, so that damage caused to the neighbours should be made good.

Ulpian, in the Eighteenth Book of his Commentary on the Edict, under the Title, "If he will admit that the death was wrongfully caused, the claim should be for simple damages," and when he said :

If you have damaged my tenement-house by fire, or set it on fire, I shall have an Aquilian action. This also applies (if you have damaged) my shrubbery or country seat.

PAGE 116, line 25. *Et cum diceret.* See above, Title ii., chap. 4, § 1. Mommsen explains it to mean that only the pertinent portion of the passage is quoted by the Collatio. This would be analogous to the statement below, Title, xv., 2, § 4, *Cuius rescripti uerba quia multa sunt de fine eius ad locum haec pauca subieci.* Huschke prefers the emendation *ut condiceret*, which would be part of the quotation from Ulpian.

- XII. 7, 2 meam. quod si dolo quis insulam exusserit, etiam capitis poena plectitur, quasi incendiarius.
- 3 Item si quis insulam uoluerit exurere et ignis etiam ad uicini insulam peruenerit, Aquilia tenebitur lege uicino etiam, non minus inquilinis ob res eorum exustas, et ita Labeo libro XV 5 responsorum refert.
- 4 Sed si stipulam in agro tuo incenderis ignisque euagatus ad praedium uicini peruenerit et illud exusserit, Aquilia lex locum habeat an in factum actio sit, fuit quaestio.
- 5 Sed plerisque Aquilia lex locum habere non uidetur, et ita 10 Celsus libro XXXVII digestorum scribit. ait enim 'si stipulam incendientis ignis effugit, Aquilia lege eum non teneri, sed in factum agendum, quia non principaliter hic exussit, sed dum aliud egit, sic ignis processit.'
- 6 Cuius sententia et rescripto diui Seueri conprobata est in haec 15 uerba: 'profitere propter ignem, [qui] pabuli gratia factus culpa seruorum Veturiae Astiliae euagatus agrum tuum, ut proponis, depopulatus est, ad exemplum legis Aquiliae noxali iudicio actura: si litis aestimatio permittitur, iudicium consistere potest.' uidelicet non est uisa Aquilia sufficere. 20
- 7 Si fornacarius seruusue aedium conductoris coloniae ad fornacem obdormisset et uilla fuerit exusta, Neratius scribit ex locato conuentum praestare debere, si negligens in elegendis ministeriis fuit. ceterum si alius ignem subiecerit fornaci, alius negligenter custodierit, [an] tenetur? namque qui non custodit, 25 nihil fecit: qui recte ignem subiecit, non peccauit: quemadmodum si hominem medicus recte secuerit, sed negligenter uel ipse uel alius curauerit, Aquilia cessat. quid ergo est? et hic puto ad exemplum Aquiliae dandam actionem tam in eum, qui ad fornacem obdormiuit uel negligenter custodit, quam in medicum qui 30 negligenter curauit, siue homo periit siue debilitatus est.

c. 7, 3. si quis — exustas = *Dig.* ix. 2, 27, 8.

c. 7, 7 = *Dig.* ix. 2, 27, 9, with some omissions.

Line 21. *Si fornacarius seruusue aedium conductoris coloniae*, with Huschke. Mommsen reads *Si forte seruus, qui idem conductor est coloni*.

Lines 26-28. *Quemadmodum.....cessat.* Cp. *Digest* ix. 2, 27, *pr.*

But if anyone has maliciously burnt down a tenement-house, he is even capitally punished as an incendiary.

If anyone has attempted to burn down a tenement-house, and the fire has reached his neighbour's tenement, he will be liable to his neighbour under the *Lex Aquilia* (for damage to the house), and not less so to the tenants for their property lost by fire. And thus Labeo reports in the Fifteenth Book of his Responses.

But if you had been burning stubble in your field, and the fire spread and reached your neighbour's property and burnt it, it was a moot point whether an action would lie under the *Lex Aquilia*, or whether it was necessary to have an action on the case. Most authorities hold that the *Lex Aquilia* does not here apply, and so Celsus writes in the Thirty-seventh Book of his Digests. His words are: "If, in burning stubble, the fire escapes, the defendant is not liable under the *Lex Aquilia*, but an action on the case will lie, since he did not cause the conflagration directly, but the fire spread while his attention was otherwise engaged."

His opinion is also approved in a rescript of the late Emperor Severus in the following terms: "You propose suing in a noxal action, framed after the formula of the *Lex Aquilia*, for damages caused by a fire lit for the purpose of preparing food, which spread through the fault of Veturia Astilia's slaves, and, as you say, laid waste your field. Lay an information: the trial can take place when the amount of the claim has been admitted." Obviously the Aquilian Action was not deemed sufficient to meet the case.

If a kiln-keeper or a house-slave belonging either to the hirer of a kiln or a tenant had fallen asleep at the kiln and a country seat has been burnt down, Neratius writes that if sued in an action of hire, the hirer or tenant will have to make good the loss if he was actually negligent in the choice of his servants. But if one lit the furnace, and another watched the fire carelessly, is he liable? The one who did not watch, did nothing; the one who properly kindled the fire was not in fault; just as when a surgeon competently operated on a man but either the operator himself or another person was negligent in the after treatment, the Aquilian Action will not lie. What then is the practical conclusion? Here, I think, an action framed on the *Lex Aquilia* should be given against the man who fell asleep at the kiln, or kept watch negligently, just as it is given against the practitioner who treated the patient negligently, whether the latter died or was disabled. It is no defence that the

Nec quisquam dixerit in eo qui obdormiuit rem eum humanam et naturalem passum, cum deberet uel ignem extinguere uel ita
 XII. 7, 8 munire, ut non euagaretur. item libro VI ex Vibiano relatum est: si furnum secundum parietem communem haberes, an damni iniuria teneris? et ait [Proculus] agi non posse Aquilia lege, quia 5 nec cum eo qui focum haberet: et ideo aequius putat in factum actionem dandam. sed non proponit exustum parietem. sane enim quaeri potest, [si] nondum mihi damnum dederis et ita ignem habeas, ut metuam ne mihi des, an aequum sit me interim actionem, id est in factum inpetrare? fortassis enim de hoc senserit Proculus. 10
 9 nisi quis dixerit damni non facti sufficere cautionem. sed et si qui serui inquilini insulam exusserint, libro X Vrseius refert Sabinum respondisse lege Aquilia seruorum nomine dominum noxali iudicio conueniendum: ex locato autem dominum teneri negat. Proculus autem respondit, cum coloni serui uillam 15 exusserint, colonum uel ex locato uel lege Aquilia teneri, ita ut colonus seruos posset noxae dedere et si uno iudicio res esset
 10 iudicata, altero amplius non agendum. item Celsus libro XXVII digestorum scribit: si, cum apes meae ad tuas aduolassent, tu eas exusseris, quosdam negare competere legis Aquiliae actionem, 20 inter quos et Proculum, quasi apes domini mei non fuerint. sed id falsum esse Celsus ait, cum apes reuenire soleant et fructui mihi sint. sed Proculus eo mouetur, quod nec mansuetae nec ita clausae fuerint. ipse autem Celsus ait nihil inter has et columbas interesse, quae, si manum refugiant, domi tamen fugiunt. 25

(TITVLVS XIII.)

DE TERMINO AMOTO.

Moyses dicit:

XIII. 1, 1

Non transmuebis terminos proximi tui, quos constituerunt patres tui uel principes possessionis tuae.

30

c. 7, 8 = *Dig.*, ix. 2, 27, 10, with some omissions.c. 7, 9. Proculus — agendum = *Dig.* ix. 2, 27, 11, with some omissions.c. 7, 10. si cum — exusseris = *Dig.* ix. 2, 27, 12.

Line 18. *Agendum.* The *Digest* continues after *agendum* thus: *Sed haec ita, si culpa colonus careret; ceterum si noxios seruos habuisset, damni eum iniuria teneri, cur tales habuerit. Idem seruandum et circa inquilinorum insulae personas scribit. Quae sententia habet rationem.*

Line 25. *Domus tamen fugiunt.* Huschke has *domitae tamen fugiunt*: Though they escape from the hand, they escape as domesticated birds. Mommsen's *domi* ought, perhaps to be *domum*.

Lines 29-30. Deut. xix. 14: Thou shalt not remove thy neighbour's landmark, which they of old time have set in thine inheritance, which thou shalt inherit in the land that the Lord thy God giveth thee to possess it. Cp. Deut. xxvii. 17.

sleeper was overcome by a weakness inherent in human nature since it was his bounden duty either to have extinguished the fire or taken the requisite precautions to prevent it spreading.

The following case is likewise cited in the Sixth Book from Vibianus. If you should have a bake-house next to a party-wall would you be liable in an action for unlawful damages? [Proculus] says: An action will not lie under the *Lex Aquilia*, seeing that the owner of an ordinary stove cannot be sued. He accordingly thinks it fair that an action on the case be granted. But he does not deal with the event of the wall being burnt down. The question may indeed be put: You have not yet occasioned me actual damage, but the fire on your premises is such as to cause me to apprehend damage; is it right that I obtain in the interim an action, that is, on the case? Possibly, Proculus had such a situation in mind, unless it be argued that, where damage is apprehended, the giving of security would be sufficient.

Moreover, where a tenant's servants have burnt down a tenement house, Urseius, in his Tenth Book, quotes a response of Sabinus that the master may be sued under the *Lex Aquilia* in a noxal action to answer for his slaves, but says the master cannot be sued in an action of hire.

Proculus, however, gave a response that when a tenant farmer's slaves burn down a country mansion, he can be sued either in an action of hire or under the *Lex Aquilia*, but may discharge the claim by a noxal surrender of the slave; and once the claim has been judicially determined, no further action can be brought.

Celsus, in the Twenty-seventh Book of his Digests, writes: If my bees swarmed with yours and you burnt them, some jurists, among them Paulus, say that no action under the *Lex Aquilia* will lie, on the ground that the bees at the time were not in my ownership. "This," says Celsus, "is wrong, since bees usually return to their hives and are a source of profit to me." Proculus was influenced by the consideration that bees are neither domesticated, nor kept shut up. The answer of Celsus is that there is no difference between them and pigeons, which, though they escape from the hand, nevertheless fly home.

THIRTEENTH TITLE.

"OF REMOVING BOUNDARY MARKS."

Moses says:

Thou shalt not remove thy neighbour's boundary marks,

MOSAICARUM ET ROMANARUM

XIII. 2, 1 Paulus libro sententiarum [primo] sub titulo finium regundorum:

In eum, qui per uim terminos deiecit uel amouit, extra ordinem anima aduertitur.

XIII. 3, 1 Ulpianus libro octauo de officio proconsulis sub titulo de termino moto: 5

Eos qui terminos mouerunt non in pūne id facere debere
a. 119 diuus Hadrianus Terentio Gentiano XVII k. Sept. se III consule
2 rescripsit, quo rescripto poenam uariam statuit. uerba rescripti
ita se habent: 'pessimum factum eorum, qui terminos finium 10
causa positos abstulerunt, dubitari non potest. poenae tamen
modus ex condicione personae et mente facientis magis statui
potest: nam si splendidiore sunt personae, quae conuincuntur,
non dubito quin occupandorum aliorum finium causa id admiserint,
et possunt in tempus, ut cuiusque patitur aetas, relegari [id est si 15
iuuenior in longius, si senior recisius: si uero alii negotium gesserunt
et ministerio functi sunt, castigari] et sic in biennium aut
triennium ad opus publicum dari. quod si per ignorantiam aut fortuito
lapides usus causa furati sunt, sufficit eos uerberibus coerceri.'

(TITVLVS XIII.)

20

DE PLAGIARIIS.

XIV. 1, 1 Moyses dicit: Quicumque plagiauerit quemquam Israhel et uendiderit eum, morte moriatur.

XIV. 2, 1 Paulus libro sententiarum V sub titulo ad legem Fabiam:

Lege Fabia tenetur, qui ciuem Romanum ingenuum liber- 25
tinumue seruumue alienum celauerit uendiderit uinxerit com-
2 parauerit. et olim quidem huius legis poena nummaria fuit, sed
translata est cognitio in praefectum urbis, itemque praesidis

c. 2 = Paulus i. 16. c. 3, 2. *This rescript is quoted by Callistratus, Dig. xlvii. 21, 2: Title xiv. c. 2. From this passage Paulus v., 30b is restored.*

Lines 3-4. *Extra ordinem*; trial by magistrates without reference to *iudices*, the case being criminal and not to be met by pecuniary penalties. Cp. *Digest* xlvii. 21, l. 1, and *ibid.* l. 3, § 2, *fin.*

Lines 22-23. Exod. xxi. 16: And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.

Deut. xxiv. 7: If a man be found stealing any of his brethren of the children of Israel, and maketh merchandise of him, or selleth him; then that thief shall die; and thou shalt put evil away from among you.

Lines 25-27. *Lege Fabia.....comparauerit.* Cp. Paulus v. 6, § 14; *Digest* xlviii. 15, l. 1, and *ibid.*, l. 6, § 2; Justinian's Code, ix. 20, l. 9 and 15. See also below in this title, chap. 3 §§ 4 and 5.

Line 27—page 124, line 3. *Et olim.....relegantur.* Paulus v. 6, § 14 and *Digest* xlviii. 15, l. 7.

Line 28. *Translata est cognitio in praefectum urbis.* See below chap. iii., § 2. So also the inscription in Justinian's Code ix. 20, l. 7, referring to a case coming under this law, reads: *Idem A. A. Maximo Pf. U. (=Praefecto urbis).*

Cognitio. After this word Huschke supplies (*in Italia*).

LEGUM COLLATIO.

which thy fathers or the chiefs of thy possession have set up.

Paulus, in the First Book of The Sentences, under the title
“Of Adjustment of Boundaries”:

The forcible throwing down or removal of boundary marks is dealt with by the Praetor, in his extraordinary jurisdiction.

Ulpian, in the Eighth Book of the Proconsular Functions, under the title “The Removal of Boundary Marks”:

The Emperor Hadrian sent, on the 16th of August, [in the third year of his Consulship,] a rescript to Terentius Gentianus, that removers of landmarks should not be suffered to go unpunished. In this rescript he fixed varying penalties.

The terms of the Rescript are as follows: Removal of landmarks, which are set up to indicate boundaries, is undoubtedly a most wicked act. The punishment to be awarded, however, is determined by the status of the offender and his motive. If those convicted be persons of rank, I do not doubt that their purpose was to appropriate lands belonging to others. They may be deported for terms proportionate to their age [that is, the younger offender for a longer period; the older for a shorter one. If others have performed the actual removal in obedience to orders, they are to be whipped] and sent for two or three years to the public works. But if they have stolen the stones in order to use them, not knowing that they were landmarks, or thoughtlessly, a flogging is sufficient punishment.

FOURTEENTH TITLE.

“OF KIDNAPPERS.”

Moses says:

Whosoever stealeth anyone in Israel and selleth him, let him surely die.

Paulus, in the Fifth Book of The Sentences, under the title
“On the Lex Fabia”:

Whosoever has concealed, sold, imprisoned, placed in bonds, or acquired a free-born Roman citizen, freedman, or another man's slave, is liable under the Lex Fabia.

The penalty under this law was formerly monetary; the offence has, however, been transferred to the jurisdiction of the Urban Prefect and the extraordinary jurisdiction of the President of the Province; and offenders belonging to the lower

prouinciae extra ordinem meruit animaduersionem. ideoque humiliores aut in metallum dantur aut in crucem tolluntur, honestiores adempta dimidia parte bonorum in perpetuum relegantur. XIV. 2, 3 si seruus sciente domino alienum seruum subtraxerit uendiderit celauerit, in ipsum dominum animaduertitur: quod si id domino 5 ignorante commiserit, in metallum datur.

XIV. 3, 1 Ulpianus libro nono de officio proconsulis sub titulo ad legem Fabiam:

Frequens est etiam legis Fabiae cognitio in tribunalibus praesidum, quamquam quidam procuratores Caesaris usurpauerint 10
2 tam in prouinciis quam Romae. sed enim iam eo peruentum est constitutionibus, ut Romae quidem praefectus urbis solus super ea re cognoscat, si intra miliarium centesimum sit iniuria commissa: enimuero si ultra centesimum, praefectorum praetorio erit cognitio. in prouincia est praesidium prouinciarum, nec aliter 15
procuratori Caesaris haec cognitio iniungitur, quam si praesidis partibus in prouincia fungatur. plane post sententiam de Fabia latam procuratoris partes succedunt huiusce rei. attamen procurator qui nullam prouinciam regit licet de capitalibus causis cognoscere nec soleat, tamen ut de lege Fabia possit 20
cognoscere, imp. Antoninus constituit. idem legis Iuliae de adulteris coercendis constitutione imperatoris Antonini quaestionem accepit. lege autem Fabia tenetur, qui ciuem Romanum eumue, qui in Italia liberatus sit, celauerit uinxerit uinctumue habuerit, uendiderit emerit, quique in eam rem socius 25
fuerit: cui capite primo eiusdem legis poena iniungitur. si seruus quis sciente domino fecerit, dominus eius sestertiis quinquaginta

Line 13. *Iniuria*, Huschke omits as superfluous after *ea re* in the previous line. Possibly *iniuria* here means offence. Huschke, instead of *iniuria commissa*, has *in Fabiam commissum*. In *Fabiam* also seems superfluous.

Lines 15-17. *In prouincia.....fungatur*. Cp. Justinian's Code ix. 20, l. 4; *ibid.* ix, 47, l. 2; *ibid.* iii., 26, l. 3; *Digest* 1, 19, l. 3 *pr.*

Lines 18-20. *Huiusce rei.....soleat*. Huschke reads *Uice praesidis tamen procurator, qui illam prouinciam regit, licet de capitalibus causis cognoscere (nequeat) nec soleat*: "Though the Procurator who governs that province on behalf of the President cannot, and usually does not, exercise jurisdiction in capital charges." Huschke adds *nequeat*, on the ground that those belonging to the upper classes could decline the jurisdiction of the Procurator by appealing to the Emperor (see Acts of the Apostles, xxv. 9 and 10). He justifies his reading of the passage on the ground that a Procurator could not be said *regere prouinciam*, unless he acts on behalf of the *praeses prouinciae*, and during his absence. He also quotes *Digest* xxxix. 4, l. 16, § 1, to the effect that Procurators could not even judge a slave charged under the *Lex Julia de Adulteriis*; while here they are said to have jurisdiction in such cases, even against free men.

Lines 23-26. *Lege.....fuerit*. Cp. above in this title, chap. 2, § 1.

Line 23. *Ciuem Romanum*. Huschke adds (*Latinum, Italicum, ingenuum*), and suspects that above (page 122, line 25), after *ciuem Romanum*, the word *Latinum* has fallen

classes are therefore sent to the mines or crucified; those of honourable rank are deprived of half their property and deported for life.

If a slave steal, sell, or hide the slave of another master, with his own master's knowledge, the latter is punished. But if the master is ignorant of the act, the slave is sent to the mines.

Ulpian, in the Ninth Book of The Proconsular Functions, under the title "On the Lex Fabia":

Cases under the Lex Fabia are commonly taken in the President's Courts, though some of the Imperial Procurators, both at Rome and in the Provinces, have arrogated the jurisdiction to themselves. This practice has, under the Constitutions, gone so far that the City Prefect alone takes cognisance of the matter if the offence has been committed within one hundred miles of the City. Outside this limit, the jurisdiction belongs, of course, to the Prætorian Prefect; in the provinces it belongs to the Presidents of the Provinces, and is only vested in the Imperial procurator when he acts there as substitute for the President. Clearly, after a sentence under the Lex Fabia has been pronounced, the Procurator's functions follow.

Nevertheless, a Procurator, who is not governing a province, though usually without jurisdiction in capital charges, has been empowered by a constitution of the Emperor Antoninus to try offences under the Lex Fabia. And enquiries into cases under the Lex Julia for checking adulteries have, by virtue of a constitution issued by the Emperor Antoninus, likewise devolved upon this official.

The Lex Fabia is directed against anyone who hides, binds, holds bound, sells or buys a Roman citizen, or any one emancipated in Italy, as well as against an accomplice to these offences; the penalty is fixed in the first chapter of this statute. If a slave commit the offence with the knowledge of his master, the same chapter provides that the latter be fined 50,000 sesterces.

PAGE 124 (cont.) out. This is not necessary. At the time when the *Lex Fabia* was passed, it applied to all free men and freed men in Italy, and was afterwards extended to the provinces. The *Latini* should therefore, also have been named. But in Ulpian's days there were no longer *Latini* except *Libertini* and *dediticii*, hence their omission as a separate class (Mommson *in loco*).

Line 26. *Iniungitur*. Huschke adds (*sestertium C milium*); Mommson thinks that it was deliberately omitted as obsolete.

Line 26—page 126, line 1. *Si servus.....punitur*. Cp. *Digest* xl. 1, l. 12.

XIV. 3, 5 milibus eodem capite punitur. eiusdem legis capite secundo tenetur, qui alieno seruo persuaserit, ut dominum fugiat quive alienum seruum inuito domino celauerit uendiderit emerit dolo malo, quive in ea re socius fuerit: iubeturque populo sestertia quinquaginta milia dare. et reliqua.

- 6 Sciendum tamen est ex nouellis constitutionibus capitali sententia plagiatores pro atrocitate facti puniendos: quamuis et Paulus relatis supra speciebus crucis et metalli huiusmodi reis inrogauerit poenam.

(TITVLVS XV.)

XV. 1, 1 DE MATHEMATICIS, MALEFICIS ET MANICHAËIS.

Moyses dicit:

- Non inueniatur in te qui lustret filium tuum aut filiam tuam, nec diuinus apud quem sortes tollas: nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. nec intendas prodigia, nec interroges mortuos. (non inueniatur in te auguriorum nec inspector auium nec maleficus aut incantator nec pythonem habens in uentrem nec haruspex nec interrogator mortuorum nec portenta inspicies): omnia namque ista a domino deo tuo damnata sunt et qui fecerit haec. propter has enim abominationes deus eradicabit Chaldaeos a facie tua. tu autem perfectus eris ante dominum deum tuum: gentes enim istae, quas tu possides, auguria et sortes et diuinationes audiebant.

Lines 1-5. *Eiusdem.....dare.* Cp. *Digest* xi. 4, l. 1, § 2, and also *Digest* xlviii. 15.

Line 6. *Nouellis constitutionibus.* Cp. Justinian's Code, ix. 20, ll. 7 and 16. The former constitution (l. 7) is by the Emperors Diocletian and Maximian (287 c.e.); the second (l. 16) is by Constantine (315 c.e.). Cp. also Theodosian Code, ix. 18.

Lines 13-24. Deut. xviii. 10-14: There shall not be found among you anyone that maketh his son or his daughter to pass through the fire,^a or that useth divination, or an observer of times,^c or an enchanter,^d or a witch,^e or a charmer,^f or a consulter with familiar spirits,^g or a wizard,^h or a necromancer.

For all that do these things are an abomination unto the Lord: and because of these abominations the Lord thy God doth drive them out before thee.

Thou shalt be perfect with the Lord thy God.

For these nations, which thou shalt possess, hearkened unto observers of times, and unto diviners: but as for thee, the Lord thy God hath not suffered thee so to do.

The Hebrew original for the last word in verse 10, rendered "witch," is masculine, and means "wizard."

The traditional Jewish interpretation of—

^a = A worshipper of Moloch.

^d = One who stakes events on a chance.

^c = An observer of times, or, according to one view, a prestidigitateur.

LEGUM COLLATIO.

The second chapter of this law is directed against anyone who persuades another man's slave to run away from his master or, against the master's wish, hides, sells or fraudulently buys a slave, or abets such offences. He is ordered to pay 50,000 sesterces to the public treasury, etc.

It must, however, be noted that, according to recent constitutions, kidnappers are to be capitally punished, as befits the heinousness of the crime, though Paulus, indeed, in the passage cited above, also says that criminals of this type should be sentenced to crucifixion or the mines.

TITLE XV.

OF ASTROLOGERS, SORCERERS AND MANICHAEANS.

Moses says:

Let there not be found in thee any one who purgeth thy son or daughter (by fire), nor a diviner with whom thou castest lots; nor shalt thou countenance makers of poisons, imposters who say what it is that a woman has conceived, since these are misleading tales. Nor shalt thou give heed to prodigies, nor enquire of the dead.

Let there not be found in thee an augur, nor examiner of birds, nor sorcerer, nor enchanter, nor one that has a snake in his belly, nor a soothsayer, nor an enquirer of the dead, nor a watcher of portents.

For all these things as well as the doer of them are condemned by the Lord, thy God. For because of these abominations God will uproot the Canaanites from before thee.

But thou shalt be perfect before the Lord thy God.

For those nations which thou wilt possess listened to auguries, lots and divinations.

PAGE 126 (*cont.*) ^d = A superstitious man; *e.g.*, who refuses to go on a journey because his bread fell out of his hands, or a stag crossed his path.

^e = Wizard.

^f = A snake-charmer, who collects snakes into one place.

^g = A wizard, called *pīthom*=*pytho*, who speaks from his armpit.

^h = One who puts the bone, called *Jaddua*, into his mouth, and the bone speaks.

The Collatio mostly follows the Septuagint, but translates the terms in accordance with the superstitions of the times.

Line 15. *Quid conceptum habeat*, *i.e.*, whether the foetus is that of a male or female child.

Line 17. *Auguriator* = observer of the flight of birds. *Inspector autum* = examiner of the entrails of birds.

XV. 2, 1 Ulpianus libro VII de officio proconsulis sub titulo de mathematicis et uaticinatoribus :

Praeterea interdictum est mathematicorum callida inpostura et obstinata persuasione. nec hodie primum interdicti eis placuit, sed uetus haec prohibitio est : denique extat senatus consultum 5

a 17 Pomponio et Rufo cons. factum, quo cauetur, ut mathematicis Chaldaeis ariolis et ceteris, qui simile inceptum fecerunt, aqua et igni interdicatur omniaque bona eorum publicentur, et si externarum gentium quis id fecerit, ut in eum animaduertatur. 2 sed fuit quaesitum, utrum scientia huiusmodi hominum puniatur 10 an exercitio et professio. [et] quidem apud ueteres dicebatur professionem eorum, non notitiam esse prohibitam : postea uariatum. nec dissimulandum est nonnumquam inrepsisse in usum, ut etiam profiterentur et publice se praeberent. quod quidem magis per contumaciam et temeritatem eorum factum est, 15 qui uisi erant uel consulere uel exercere, quam quod fuerat 3 permissum. saepissime denique interdictum est fere ab omnibus principibus, ne quis omnino huiusmodi ineptiis se immisceret, et uarie puniti sunt ii qui id exercuerint, pro mensura scilicet consultationis. nam qui de principis salute, capite puniti sunt uel 20 qua alia poena grauiore adfecti : enimuero si qui de sua suorumque, leuius. inter hos habentur uaticinatores, quamquam ii quoque plectendi sunt, quoniam nonnumquam contra publicam quietem imperiumque populi Romani improbandas artes exercent. 4 extat denique decretum diui Pii ad Pacatum legatum prouinciae 25 Lugudunensis, cuius rescripti uerba quia multa sunt, de fine eius 5 ad locum haec pauca subieci. denique diuus Marcus eum, qui motu Cassiano uaticinatus erat et multa quasi instinctu deorum 6 dixerat, in insulam Syrum relegauit. et sane non debent inpune ferre huiusmodi homines, qui sub obtentu ex monitu deorum 30 quaedam uel enuntiant uel iactant uel scientes confingunt.

Line 4. *Et obstinata persuasione.* Huschke has instead, *et opinatae artis persuasio* : "and the attempts to persuade people of the truth of their pretended art."

Line 5-9. *Denique.....animaduertatur.* The date of this *Senatus-consultum* according to Tacitus (Annals ii. 32) was the year 17 C.E.; according to Dio (lvii. 15) the year 16 C.E.

Lines 10-11. *Sed fuit.....professio.* Cp. Paulus, v. 21, § 4, *ibid.*, v. 23, § 18, and Theodosian Code, ix. 16, ll. 3 and 8, which forbid the learning or teaching of these arts.

Lines 17-20. *Saepissime.....consultationis.* Cp. Paulus v., 21, § 3.

Line 25. *Decretum.* The Emperor's decision on a legal point referred to him in his appellate jurisdiction.

Line 27. *Subieci.* Schulting thinks that the quotation referred to has dropped out. Huschke takes paragraph 6, lines 29-31 as the quotation which should come before paragraph 5. This seems plausible.

Line 27. *Marcus, i.e., Marcus Aurelius.*

Line 28. *Motu Cassiano,* in the year 175, C. E. Cp. Justinian's Code ix. 8, l. 7 *pr.*

LEGUM COLLATIO.

Ulpian, in the Seventh Book of The Proconsular Functions, under the title of "Astrologers and Soothsayers":

Moreover, a ban has been put upon the crafty imposture and persistent persuasions of the astrologers. Nor has this been forbidden them to-day for the first time; the prohibition is of long standing. In fact, a *Senatus-consultum*, passed in the Consulship of Pomponius and Rufus, is extant, which provides that astrologers, Chaldeans, soothsayers, and others who engage in the like practices, be interdicted from fire and water, and all their property confiscated, and if the offender be a foreigner, he shall be punished with death.

It was a moot point whether the knowledge or the exercise and practice of this art is punished. The ancient authorities indeed said that practice and not mere knowledge was forbidden; this view afterwards changed.

We must not hide from ourselves that there have been times when these arts so crept into use that they were even publicly practised and advertised. But this was due to the contumacy and audacity of those who had been observed to have had recourse to or practised the arts, rather than to any legal sanction.

Nearly all the Emperors have indeed, time after time, issued interdicts which forbid meddling with such meaningless things, and those practising them were punished in accordance with the character of the consultation. If the Emperor's health was the subject of the consultation, death or other severe punishment was inflicted; the penalty was lighter where the enquiry concerned the consulter's own health or that of his relatives. This last class also includes soothsayers, though they, too, must be punished, because they sometimes exercise their reprehensible arts to the prejudice of the public peace and the Roman Empire.

Finally, there is extant a decree of the late Emperor Antoninus Pius, to Pacatus, Lieutenant-General of the Province of Lyons; and the rescript being rather long, I have quoted these few, relevant words.

And indeed, the Emperor Marcus deported to the island of Syrus one who, in the sedition of Cassius, played the soothsayer, and made many statements as though under divine inspiration.

And surely we ought not to allow men of this character to go unpunished, who, pretending that they have divine messages, make or circulate announcements, or feign that others have this knowledge.

xv 3, 1 Gregorianus libro VII sub titulo de maleficis et Manichaeis:

Imp. Diocletianus et Maximianus AA. [et Constantius] et Maximianus nobilissimi [CC.] Iuliano proconsuli Africae. Otia maxima interdum homines incommodioris condicionis naturae humanae modum excedere hortantur et quaedam genera inanis-
sima ac turpissima doctrinae superstitionis inducere suadent, ut
sui erroris arbitrio pertrahere et alios multos uideantur, Iuliane
2 karissime. sed dii immortales providentia sua ordinare et dis-
ponere dignati sunt, quae bona et uera sunt ut multorum et bono- 10
rum et egregiorum uirorum et sapientissimorum consilio et trac-
tatu inlibata probarentur et statuerentur, quibus nec obuiam ire
nec resistere fas est, neque reprehendi a noua uetus religio
deberet. maximi enim criminis est retractare quae semel ab
antiquis statuta et definita suum statum et cursum tenent ac 15
3 possident. unde pertinaciam prauae mentis nequissimorum
hominum punire ingens nobis studium est: hi enim, qui nouellas
et inauditas sectas ueterioribus religionibus obponunt, ut pro
arbitrio suo prauo excludant quae diuinitus concessa sunt quon-
dam nobis, de quibus sollertia tua serenitati nostrae retulit, 20
4 Manichaei, audiuius eos nuperrime ueluti noua [et] inopinata
prodigia in hunc mundum de Persica aduersaria nobis gente
progressa uel orta esse et multa facinora ibi committere, populos
namque quietos perturbare nec non et ciuitatibus maxima detri-
menta inserere: et uerendum est, ne forte, ut fieri adsolet, 25
accedenti tempore conentur [per] execrandas consuetudines et
scaeuas leges Persarum innocentioris naturae homines, Romanam
gentem modestam atque tranquillam et uniuersum orbem nos-
5 trum ueluti uenenis de suis maliuolis inficere. et quia omnia,
quae pandit prudentia tua in relatione religionis illorum, genera 30
maleficiorum statutis euentissime sunt exquisita et inuenta
commenta, ideo aerumnas atque poenas debitas et condignas illis

Line 1. *Libro vii.* Thus the Berlin Codex. The Vercelli MS. has *vi.*; Schulting has *libro viii.*; Haenel's edition of the Gregorian Code, p. 44, gives it as *lib. xiv., title iv.*

Line 5. *Incommodioris.* Mommsen has *in communione*, following the MSS. This reading, however, gives no sense.

Line 7. *Superstitionis.* Huschke has *superstitiosis* "and persuades superstitious people to bring in empty and scandalous doctrines." Huschke, on the authority of Suetonius, Julian 88, *decernentium ore*, supplies *ore* after *uirorum*, and contrasts *ore multorum* with *consilio sapientissimorum*.

Line 20. *De quibus.* Huschke begins with these words a new sentence.

Line 21. *Manichaei.* Huschke writes *Manichaeos*; Haenel, *Manichaeis*.

Lines 30-31. *Genera maleficiorum statutis euentissime sunt exquisita et inuenta commenta.* Huschke has instead, *genera maleficiorum statuunt euentissi-*

LEGUM COLLATIO.

Gregorian, in the Seventh Book, under the title "Of Sorcerers and Manichaeans":

The Emperors Diocletian and Maximian [and Constantius] and Maximian to Julian, Proconsul of Africa: Well-beloved Julian: Excessive leisure sometimes incites ill-conditioned people to transgress the limits of nature, and persuades them to introduce empty and scandalous kinds of superstitious doctrine, so that many others are lured on to acknowledge the authority of their erroneous notions.

But the immortal Gods, in their Providence, have thought fit to ordain that the principles of virtue and truth should, by the counsel and deliberations of many good, great and wise men, be approved and established in their integrity. These principles it is not right to oppose or resist, nor ought the ancient religion to be subjected to the censure of a new creed. It is indeed highly criminal to discuss doctrines once and for all settled and defined by our forefathers, and which have their recognized place and course in our system. Wherefore we are resolutely determined to punish the stubborn depravity of these worthless people.

As regards the Manichaeans, concerning whom you have reported to us, who, in opposition to the older creeds, set up new and unheard-of sects, purposing in their wickedness, to cast out the doctrines vouchsafed to us by Divine favour in olden times, we have heard that they have but recently advanced or sprung forth, like strange and monstrous portents, from their native homes among the Persians—a nation hostile to us—and have settled in this part of the world, where they are perpetrating many evil deeds, disturbing the tranquillity of the peoples and causing the gravest injuries to the commonalties; and there is danger that, in process of time, they will endeavour, as is their usual practice, to infect the innocent, orderly and tranquil Roman people, as well as the whole of our Empire, with the damnable customs and perverse laws of the Persians as with the poison of a malignant serpent. And since all that your wisdom has set out in detail in your report of their religion shows that what our laws regard as

(PAGE 130 cont.)

morum, exquisita arte adinuenta (ac) commenta. The meaning is: "And since all the things which your wisdom has discovered in the religion of those people consist of classes of crimes of the clearest character, invented and contrived with consummate skill."

XV. 3. 6 statuimus. iubemus namque auctores quidem ac principes una cum abominandis scripturis eorum seueriori poenae subici, ita ut flammeis ignibus exurantur: consentaneos uero et usque adeo contentiosos capite puniri praecipimus, et eorum bona fisco 7 nostro uindicari sancimus. si qui sane etiam honorati aut 5 cuiuslibet dignitatis uel maiores personae [ad] adhuc inauditam et turpem atque per omnia infamem sectam, uel ad doctrinam Persarum se transtulerint, eorum patrimonia fisco nostro adsociari facies, ipsos quoque Phaenensibus uel Proconnensibus 8 metallis dari. ut igitur stirpitus amputari lues haec nequitiae de 10 saeculo beatissimo nostro possit, deuotio tua iussis ac statutis a. 302? tranquillitatis nostrae maturet obsecundare. Dat. prid. k. April. Alexandriae.

(TITULUS XVI.)

DE LEGITIMA SUCCESSIONE.

15

XVI. 1, 1 Scriptura diuina sic dicit:

Filiae Salfad adstantes ante Moysen et Eleazarum sacerdotem et principes omnemque senatum filiorum Israhel in foribus 2 tabernaculi testimonii dixerunt: pater noster mortuus est et filii non fuerunt ei, sed filiae, et ideo non deleatur nomen patris 20 3 nostri de medio tribus suae. non est ei masculus: date nobis 4 possessionem in medio fratrum patris nostri. et obtulit Moyses

Line 3. *Adeo*. Huschke emends *aduersos deos*. Cp. Paulus v. 21, § 2.

Line 9. *Phaenensibus uel Proconnensibus*. The former was in Arabia; the latter, Proconesum, an island in the Propontis (Huschke). Dirksen, has *Phocensibus* as an alternative reading to *Phaenensibus*. *Phocaea* was a city in Minor Phrygia. Mommsen quotes Theodoret, *Hist. Eccl.* 4, 22, *De Christianis Alexandrinis*: πολλοὶ.....τοῖς φενησίοις καὶ Προκονησίοις παρεβίδοντο μετάλλοις. Eusebius, *Hist. Eccles.* 8, 13, *et de mart. Palaest.*, 7, mentions copper mines worked in the city of Phoenia, or Phoenus of Trachonis.

Line 12. Huschke gives the date 292-295. Mommsen suggests that, as Diocletian captured Alexandria after a siege of eight months in 297, that might be the year when this Constitution was published. But he was again at Alexandria in 302, and so, this too might be the date of the Constitution.

Line 17—page 134, line 8. Num. xxvii. 1-11: Then came the daughters of Zelophehad, the son of Hephher, the son of Gilead, the son of Machir, the son of Manasseh, of the families of Manasseh, the son of Joseph; and these are the names of his daughters; Mahlah, Noah, and Hoglah, and Milcah, and Tirzah. And they stood before Moses, and before Eleazar the priest, and before the princes and all the congregation, by the door of the tabernacle of the congregation, saying: Our father died in the wilderness, and he was not in the company of them that gathered themselves together against the Lord in the company of Korah; but died in his own sin, and had no sons. Why should the name of our father be done away from among his family, because he hath no son? Give unto us *therefore* a possession among the brethren of our father. And Moses brought their cause before the Lord. And the Lord spake unto Moses, saying: The daughters of Zelophehad speak right: thou shalt surely give them a possession of an inheritance among their father's brethren; and thou shalt cause the inheritance of their father to pass unto them. And thou shalt speak unto the children of

their misdeeds are clearly the offspring of a fantastic and lying imagination, we have appointed for these people the condign pains and penalties which are their due.

We order that the founders and heads of these sects be subjected to severe punishment, and, together with their abominable writings, burnt in the flames. We direct that their followers, if they continue recalcitrant, shall suffer capital punishment, and their goods be forfeited to the Imperial treasury.

And if those who have gone over to that hitherto unheard-of, scandalous and wholly infamous creed, or to that of the Persians, are persons who hold public office, or are of any rank or standing, you will see to it that their estates are confiscated and the offenders sent to the Phænensian or Proconnensian mines.

And in order that this plague of iniquity shall be completely extirpated from this our most happy age, let your zeal hasten to carry out our orders and commands. Given at Alexandria, March 31st.

TITLE XVI.

"OF STATUTORY SUCCESSION."

The Divine Scripture says thus :

The daughters of Salfad, standing before Moses and Eleazar the Priest and the princes and the whole body of Elders of the Children of Israel in the courts of the Tabernacle of Testimony said :

Our father is dead, and he had no sons but only daughters. Let not therefore the name of our father be blotted out from the midst of his tribe. He has no male child. Give to us a possession in the midst of our father's brothers.

(PAGE 132 *cont.*)

Israel, saying, If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter. And if he have no daughter, then ye shall give his inheritance to his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it : and it shall be unto the children of Israel a statute of judgment, as the Lord commanded Moses.

From the second half of verse 8, "then ye shall cause," till first half of verse 11, "and if his father have no brethren," has dropped out of the text of the Collatio. Observe that the middle part of the text, though essential, is omitted. The Hebrew is, as rendered in the A.V., "to his kinsman that is next to him of his family." The writer of the Collatio translated *de tribu eius* "of his tribe," which assimilates the text to the rule of Roman Law, that, failing *agnates*, the *gens* succeeded. The Greek is ἐκ τῆς φυλῆς, class or tribe. The Hebrew משפחה is a much smaller division than a tribe, the Hebrew term for which is שבט.

XVI. 1, 5 petitionem earum coram deo. et locutus est dominus Moysi
6 dicens: recte filiae Salphad locutae sunt: et ideo dabit is
7 possessionem hereditatis in medio fratrum patris earum. et dices
haec filiis Israhel: homo si decesserit et filium non habuerit,

.
dabit is hereditatem proximo eorum de tribu eius: et possidebit
8 omnia eius: et erit haec filiis Israhel iustificatio iudiciorum
secundum quae constituit dominus Moysi.

XVI. 2, 1 Gaius institutionum libro III legitimas sic ordinat succes-
siones:

Intestatorum hereditates lege duodecim tabularum primum
2 ad suos heredes pertinent. sui autem heredes existimantur liberi
qui in potestate morientis fuerunt, ueluti filius filiae, nepos
neptis [ex filio], pronepos proneptis ex nepote filio nato
prognatus prognatae. nec interest naturales [sint] liberi an
3 adoptiui. ita demum tamen nepos neptis et pronepos pronep-
tis suorum heredum numero sunt, si praecedens persona
desierit [in potestate parentis esse, siue morte id acciderit] siue
alia ratione, ueluti emancipatione. nam si per id tempus, quo
quisque morietur, filius in potestate eius sit, nepos ex eo suus
4 heres esse non potest. idem et in ceteris deinceps liberorum
personis dictum intellegimus. uxor quoque, quae in manu est,
[ei cuius in manu est] sua heres est, quia filiae loco est: item
nurus quae in filii manu est, nam et haec neptis loco est. sed
ita demum erit sua heres, [si] filius, cuius in manu sit cum pater
5 moritur, in potestate eius non sit. idemque dicimus et de ea,
quae [in] nepotis manu matrimonii causa sit, quia proneptis loco
6 est. postumi quoque, [qui], si uiuo parente nati essent, in
potestate eius futuri forent, sui heredes sunt.

c. 2 = Gaius iii. 1-17, till *ex senatus consulto*, p. 136, line 2, nearly all missing in the manuscript of Gaius, restored from the Collatio; *Iustinian Inst.* iii. 1, 2, has been in part restored from this passage (xvi. 1-5).

Lines 11-12. *Intestatorum.....pertinent.* Cp. Justinian's Institutes iii. 1, § 1.

Lines 12-22. *Sui.....intellegimus.* Cp. Justinian's Institutes iii. 1, § 2; Gaius i. 114 and 115b; ii. 139 and 159; iii. 40; Ulpian xxii. 14; xxiii. 3; xxix. 1.

Lines 28-29. *Postumi.....heredes sunt.* Cp. Justinian's Institutes iii. 1, 2 *fin.*, in *potestate eius*; i.e., immediate power without any intervening ascendant. See above, § 2 in this chapter: *nam si per id tempus quo quis moritur filius in potestate eius sit, nepos ex eo suus heres esse non potest.*

LEGUM COLLATIO.

And Moses brought their petition before God.

And the Lord spake unto Moses, saying :

The daughters of Salfad have spoken rightly ; and ye shall therefore give unto them possession of an inheritance in the midst of their father's brothers.

And thou shalt say these things to the children of Israel : If a man die and have no son, ye shall give the inheritance to the nearest of those of his tribe, and he shall possess all his property. And this shall be for the children of Israel a statute of judgments according to that which the Lord has appointed unto Moses.

Gaius, in the Third Book of his Institutes, arranges the order of statutory successions as follows :

Intestate successions devolve by the Law of the Twelve Tables first to self-successors.

Self-successors are children who were in the power of the deceased at the time of his death, such as a son or daughter, a grandson or granddaughter [by a son], a great-grandson or a great-granddaughter by a grandson who was the issue of a son. It makes no difference whether they are children by birth or adoption. The grandson or granddaughter and great-grandson or great-granddaughter will be counted among self-successors, only if the person next before them had ceased to be [in the power of the parent, either through death] or other cause, such as emancipation. For, if a son was in the power of the deceased at the time of his death, a grandson by that son cannot be a self-successor ; and the same rule applies to the rest of a man's descendants in their order.

A wife too, who is in marital power, is the self-successor of the one in whose marital power she is, because she is in the position of a daughter. So likewise, a daughter-in-law who is in a son's marital power, for she is in the position of a granddaughter. She will, however, only be a self-successor if the son, in whose marital power she is, is not himself in his father's power at the latter's decease. The same rule applies to the grandson's wife who is in his marital power, because she is in the position of a great-granddaughter.

Posthumous children, too, who, had they been born in their deceased parent's lifetime would have been in his power, are his self-successors.

The same is the rule with respect to those on whose behalf the

- XVI. 2, 5 Idem iuris est de his, quorum nomine ex lege Aelia Sentia uel ex senatus consulto post mortem patris causa [probatur: nam et hi uiuo patre causa] probata in potestate eius futuri essent.
- 6 [Quod] et de eo filio, qui ex prima secundaue mancipatione post mortem patris manumittitur, intellegemus. 5
- 7 [Igitur] cum filius filiaue et ex altero filio nepotes neptesue extant, pariter ad hereditatem uocantur nec qui gradu propior est, ulteriorem excludit. aequum enim uidetur nepotes neptesue in patris sui locum portionemque succedere. pari ratione et si nepos neptisue sit ex filio et ex nepote pronepos proneptisue, 10 simul uocantur.
- 8 Et quia placebat nepotes neptesue, item pronepotes proneptesue in patris sui locum succedere, conueniens esse uisum est non in capita, sed in stirpes hereditates diuidi, ita ut filius dimidiam partem hereditatis ferat [et] ex altero filio duo pluresue nepotes 15 alteram dimidiam: item si ex duobus filiis nepotes extent, ex altero filio unus forte uel [duo], ex altero tres aut quattuor, [ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor] altera dimidia.
- 9 De agnatis. si nullus sit suorum heredum, tunc hereditas 20 pertinet ex eadem lege duodecim tabularum ad agnatos.
- 10 Uocantur autem agnati, qui legitima cognatione iuncti sunt. legitima autem cognatio est quae per uirilis sexus personas coniungitur: itaque [qui] eodem patre nati sunt fratres agnati sibi sunt, qui etiam consanguinei uocantur, nec requiritur, an 25 matrem eandem habuerint.
- Item patruus fratris filio et inuicem is illi agnatus est. eodem numero sunt fratres patruales inter se, id est qui ex duobus fratribus progenerati sunt, quos plerique etiam consobrinos uocant: qua ratione scilicet etiam ad plures gradus agnationis 30 peruenire poterimus. non tamen omnibus simul agnatis dat lex duodecim tabularum hereditatem, sed his, qui tum cum certum est aliquem intestatum decessisse, proximo gradu sunt.
- 11
- 12 Nec in eo iure successio est: ideoque si hereditatem proximus omiserit uel antequam hereditatem adierit decesserit, sequentibus 35
- 13 nihil iuris ex lege competit. ideo autem non mortis tempore, quis proximus erit, requirimus, sed eo tempore, quo certum fuerit aliquem intestatum decessisse, quia si quis testamento facto decesserit, melius esse uisum est tunc requiri proximum, cum certum esse coeperit neminem ex [eo] testamento heredem fore. 40

provisions of the Lex Aelia Sentia or the Senatus-consultum have been satisfied by proof of excusable error, which proof has been brought subsequently to the parent's death; for if the error had been proved during their father's lifetime, they would have been in his power.

The same rule applies to a son who, after having undergone a first or second mancipation, is manumitted after his father's death.

Accordingly, when there are a son or daughter and grandsons or granddaughters by another son, they are called to the succession simultaneously. And the nearer in degree does not exclude the more remote; for it seems just, that grandsons or granddaughters should succeed to their father's place and share. Similarly also, a grandson or granddaughter by one son and a great-grandson or great-granddaughter by another grandson are called to the succession simultaneously.

And since it was accepted that grandsons and granddaughters and also great-grandsons and great-granddaughters should succeed to their father's place, it seemed consistent that the succession should be divided, not according to individuals, but according to stems, so that the son should take a moiety and the two or more grandchildren by the other son should share between them the other moiety; and if there are grandchildren by two sons, one of whom has left one or [two] children, while the other has left three or four children, [the single child or the two children of the one son take one half of the inheritance, and the three or four children of the other son take] the other half.

Of Agnates. If there is no self-successor, the succession, by the same Law of the Twelve Tables, devolves to the agnates.

Agnates are those related through statutory cognation. Statutory cognation is kinship through persons of the male sex; thus, brothers by the same father are agnates. They are also called blood-relations, and it is not required that they should have the same mother. So, too, a father's consanguineous brother is agnate to his brother's son, and *vice versa*. To the same category belong consanguineous brothers' sons, whom many also style *consobrini*. Further degrees of agnation can be traced in the same way.

The Law of the Twelve Tables does not, however, give the succession to all the agnates simultaneously, but only to those who are of the nearest degree at the moment when it becomes certain that a person has died intestate.

XVI. 2, 14 quod ad feminas tamen adinet hoc iure aliud in ipsarum hereditatibus capiendis placet, aliud in ceterorum ab his capiendis. nam feminarum hereditates proinde agnationis iure redeunt atque masculorum: nostrae uero hereditates ad feminas ultra consanguineorum gradum non pertinent. itaque soror fratri sororue 5 legitima heres est, amita uero et fratris filia heres esse non potest. sororis autem nobis loco est etiam mater aut nouerca, quae per in manum conuentionem apud patrem nostrum ius filiae nanta 15 est. Si [ei] qui defunctus erit sit frater et alterius fratris filius, sicut ex superioribus intellegitur, frater potior est, quia gradu 10 praecedit: sed alia facta est iuris interpretatio inter suos heredes. 16 quod si defuncti nullus frater extet, sed sint liberi fratrum, ad omnes quidem hereditas pertinet, sed quaesitum est, si dispari numero sint, forte nati ex uno unus uel duo et ex altero tres aut quattuor, utrum in stirpes diuidenda sit hereditas, sicut inter suos 15 heredes iuris est an potius in capita. iamdudum autem placuit in capita diuidendam hereditatem: itaque quotquot erunt ab utraque parte personae, in tot portiones hereditas diuidetur et 17 singuli singulas portiones ferunt. si nullus agnatus sit, eadem lex duodecim tabularum gentiles ad hereditatem uocat. qui sint 20 autem gentiles, primo commentario retulimus et cum illic admonuerimus gentilicium ius in desuetudinem abisse, superuacuum est hoc quoque loco de ea re curiosius tractare.

XVI. 3. 1 Paulus libro sententiarum IIII sub titulo de intestatorum successionibus: 25

Intestati dicuntur, qui testamentum facere non possunt [uel iure fecerunt cum possent] uel ipsi linum ut intestati decederent

c. 3, 1-13. From this passage, Paulus Sent. iv. 8, 1-13 is restored.

Line 4. *Nostrae uero hereditates, i.e.*, left by males.

Lines 4-5. *Consanguineorum gradum, i.e.*, sisters by the same father.

Lines 27 to p. 140, l. 3. For paragraph 1, cp. Justinian's Institutes iii. 1 *pr.*, with its divisions of invalid Wills into *testamentum non iure factum, ruptum, irritum*, and *destitutum*.

Line 27. *Testamentum facere non possunt, i.e.*, children (males under 14, females under 12), lunatics, and those who have not *commercium*. But there is a distinction between the last class and the first two classes; see Digest xxxviii. 16, l. 1, *pr.*: *plane, qui testare non potuit, proprie non est intestatus, puta impubes, furiosus uel cui bonis interdictum est; sed hos quoque pro intestatis accipere debemus*.

Lines 27-28. *Qui testamentum facere non possunt [uel iure non fecerunt cum, possent]*; Huschke has instead *qui testamentum (fecerunt cum) facere non possent*.

Lines 27-28. [*Uel iure non fecerunt cum possent.*] Cp. Gaius ii., 151, 152; Digest xxviii. 4, l. 4; *ibid.* xxxvii., 11, l. 1, § 10; Justinian's Code vi. 23, l. 30.

And in succession by this title, there is no advancement in grade. Accordingly, if the agnate of the nearest degree has declined the succession, or died before acceptance, those in the next degree of agnation do not become entitled under this statute.

Hence, the date for determining who is the nearest agnate is not the moment of death, but the moment when it becomes certain that a person has died intestate; because, when a will had been made, it seemed better to take the nearest agnate at the moment when it becomes sure that there will be no heir under the will.

As regards females, the rules of titles by descent differ according to whether they leave property or take it. For inheritances left by females devolve by the same title of agnation as do those of males. But our inheritance does not devolve to females beyond the degree of blood-relationship. Thus, a sister is a statutory successor to her brother or sister by the same father, but neither a father's sister nor a brother's daughter can be a statutory successor to her nephew or uncle. A mother or a stepmother who, by virtue of being in the marital power of our father, has acquired the status of his daughter, is our quasi-sister.

If the deceased left a brother, and a nephew by another brother, the brother, being nearer in degree, is preferred, as can be learnt from what has been said above. But the rule is different in the case of self-successors.

If the deceased left no surviving brother, but there are children of more than one brother, they are all entitled to the succession. When brothers left an unequal number of children, if, for instance, one brother left one or two children, and another brother three or four, it was a question whether the inheritance is to be divided according to stems, as is the rule in the case of self-successors, or distributed in equal portions among those entitled. It has, however, long been settled that the inheritance is to be divided equally among the individuals entitled; and, therefore, according to the number of individuals descended from either side, into so many portions is the inheritance divided, so that each individual takes an equal share.

If there is no agnate, the above-mentioned Law of the Twelve Tables calls the Gentiles to the succession. Who the Gentiles are, we have stated in the First Book. And as we have there pointed out, the whole system of Gentile succession is obsolete. It is therefore superfluous to discuss the subject here again in detail.

abruperunt uel quorum hereditas repudiata est quibusue condicio defecerit, nisi iure praetorio [non iure] factum testamentum
XVI. 3, 2 obiecta doli exceptione optinebit. horum quorum testamenta
rumpuntur aut inrita fiunt, ipso quidem iure testati decedunt,
sed per consequentias sublato testamento intestati decedunt. 5
3 intestatorum hereditas lege duodecim tabularum primum suis
heredibus, deinde agnatis et aliquando quoque gentilibus
deferebatur. sane consanguinei, quos lex non adprehenderat,
interpretatione prudentium primum inter agnatos locum
4 acceperunt. sui heredes sunt primo loco filius filia in potestate 10
patris constituti: nec interest, si adoptiui sint an naturales et
secundum legem Iuliam Papiamue quaesiti, modo maneat in
5 potestate. qui sui heredes sunt, ipso iure heredes etiam igno-
rantes constituuntur, ut furiosi aut infantes et peregrinantes:
quibus bonorum possessio nisi propter praetoriam actionem non 15
6 erat necessaria. suis heredibus adeo a morte testatoris rerum
hereditariarum dominium continuatur, ut nec tutoris auctoritas
pupillis nec furiosis curator sit necessarius, nisi forte [ut abs-
tineant, si minus forte] soluendo sit hereditas: quamuis etiam
furiosus, si resipuerit, et pupillus, si adoleuerit, abstinere possint. 20
7 post mortem patris natus uel ad hostibus reuersus aut ex primo

Lines 1-2. *Conditio defecerit*. After these words Huschke adds (*quique capite minuti fuerint*, and says that much besides has fallen out, such as *uel mors cretionisue finis aditionem praeuenerit* (Gaius ii. 144).

Line 7. *Deinde agnatis*. Huschke has *deinde (consanguineis) et agnatis*, and gives as his reason for supplying *consanguineis*, the word commencing the following sentence, which in the MSS. reads *consanguineis*, and which he thinks dropped out of this place and was substituted for *consanguineos*, the word which he reads in the next sentence after *sane*.

Line 8. *Adprehenderat*. Before this word Huschke supplies *aperte*=explicitly.

Line 9. *Interpretatione prudentium*. See paragraph 20 at the end of the chapter. The *Lcx Voconia* contained a provision that a woman could not be instituted heirress to a *classicus*, i.e., one possessed of a 100,000 sesterces and upwards (Gaius ii., § 274). Hence daughters had to be included in a fresh class of *consanguinei*, otherwise they would have been excluded altogether.

Lines 12-13. *Modo maneat in potestate*. This is taken by Huschke as a beginning of the next sentence.

Line 13. *Ipso iure heredes*. Cp. Justinian's Institutes iii. 1, § 3; *Digest* xxxviii. 16, l. 14; *ibid.* xxviii. 2, l. 63.

Line 15. *Nisi propter praetoriam actionem*. Cp. Gaius iii. 34 et seq.

Lines 16-17. *A morte.....continuatur*. Cp. Justinian's Institutes iii., 1, § 3; *Digest* xxviii. 2, l. 11.

Line 18. *Nisi forte*. Cp. *Digest* xxix. 2, l. 11: *impuberibus liberis omni modo abstinendi potestas fit, puberibus autem ita, si ei non immiscuerint*; also *ibid.* l. 57 pr.

Lines 18-19. *Nisi forte [ut abstineant, si minus forte] soluendo sit hereditas*. Huschke has instead *nec si forte soluendo (non) sit hereditas*: "and he does not require this authority even, if the estate should prove insolvent."

Paulus, in the Fourth Book of the Sentences, under the title of "Succession of Intestates":

Those are said to be intestates who have no capacity to make a will [or, though they had the capacity did not make it in proper form], or themselves cut the cord with the express purpose of dying intestate; likewise, when the inheritance has been declined, or the conditions have failed; except that, where the will has been improperly made, the instituted heir, in conformity with the Praetorian law, will obtain the succession by pleading the *exceptio doli*.

Those whose wills are rescinded, or become null, die legally testate; but, as their wills are void, they become practically intestate.

Under the Law of the Twelve Tables, succession to intestates was first offered to self-successors, then to agnates, and sometimes also to members of the same gens. The statute does not indeed mention brothers and sisters; but the interpretation of the jurists has assigned them the first place among the agnates.

Self-successors are the following: in the first degree, a son or daughter in the father's power; and it makes no difference whether they are children by adoption or birth, and legitimate according to the Lex Julia et Papia, provided that they remain in power.

Self-successors become heirs by law, and even without their cognizance; as, for instance, if they are insane, infants, or abroad. A formal taking possession will not be necessary in their case, unless a Praetorian action is involved.

The ownership of things belonging to the estate passes immediately to the self-successors from the moment of the testator's decease, so much so that a ward does not require his guardian's authorisation nor a lunatic that of his committee; except, possibly for purposes of renunciation, should the estate prove insolvent; though the lunatic on recovery, and the ward on attaining puberty, may in any case renounce the succession.

Anyone born after his father's death, or who, after that event,

PAGE 140, line 20. *Abstinerere possint*, i.e. if the guardian of the ward or the committee of the lunatic respectively, had not previously renounced on their behalf.

Line 21 till p. 142, line 3. *Post mortem.....efficiuntur*. Cp. above in this title, chap. 2, §§ 4-6 and Justinian's Institutes, iii.1, § 4.

secundouē mancipio manumissus cuiusue erroris causa probata
[est], licet non fuerint in potestate, sui tamen patri heredes
XVI . 3, 8 efficiuntur. post filios filias ad intestatorum successionem inter
suos ueniunt nepotes neptes, pronepotes proneptes ac deinde
masculino sexu per filium descendentes, si nullo parentum 5
impedimento ipsi in aui potestate uel proauī familia remanserint :
parentes enim liberis suis, cum quibus in potestate fuerint ipsi,
9 ordine successionis obsistunt. filii, si cum nepotibus ex alio filio
susceptis in familia retinentur, ad intestati patris successionem
cum fratris filiis uocantur : quibus in patris sui partem uenientibus 10
hereditas in stirpes, non in capita diuiditur, ita ut unus filius et
plures nepotes singulos semisses habeant. idemque euenit, si
10 auo ex duobus filiis inpari numero nepotes successerint. ex filia
nepotes sui heredes non sunt : in aui enim materni potestate
11 alienam familiam sequentes ipsa ratione esse non possunt. eo 15
tempore suus heres constituendus est, quo certum est aliquem
intestatum decessisse : quod ex euentu deficientis condicionis et
ortu nepotis, qui uiuo auo post mortem patris [conceptus sit et
12 post mortem aui] natus, finire potest. quem filius emancipatus
suscepit uel adoptauit, sui heredis locum in aui successione sic 20
ut ipse pater obtinere non potest : [potest] adoptiuus, tamen nec
13 quasi cognatus bonorum possessionem eius petere potest. si sui
heredes non sunt, ad agnatos legitima hereditas pertinebit, inter
quos primum locum consanguinei optinent. agnati autem sunt
cognati uirilis sexus per [uirilem sexum] descendentes, sicut filius 25
14 fratris et patruus et deinceps tota successio. inter agnatos et

c. 3, 14 = *Paulus Sent.* iv. 8, 14.

Lines 3-8. *Post filios.....obsistunt.* Cp. above in this title, chap. 2, § 2.

Lines 8-13. *Filii.....successerint.* Cp. above in this title, chap. 2, §§ 7 and 8.

Lines 15-17. *Eo tempore.....decessisse.* Cp. Justinian's Institutes, iii. 1, §§ 7, 8.

Lines 17-18. *Quod ex euentu deficientis condicionis et ortu nepotis.* The text seems to contemplate two cases requiring the determination of the date when a man is to be regarded as having died intestate : (1) where the condition, subject to which the heir has been appointed under the will, has failed ; (2) where a subsequent birth has rescinded the will. Cp. Gaius ii., § 131 and Poste's Commentary, pp. 224, 225.

Lines 21-22. *Adoptiuus.....petere potest.* Cp. Digest I. 7, l. 23, and *ibid.* xxxviii. 8, l. 1, § 4.

Line 23. *Ad agnatos.* Cp. above in this title chap. 2, §§ 9 and 10.

Line 23. *Pertinebit.* Here the *Vercelli* MS. ends.

Line 26, till page 144, line 2. *Inter agnatos.....comprehenduntur.* Cp. Digest, xxxviii. 10, l. 10, § 4, and *ibid.* xxxviii. 7, l. 5 *pr.*

had returned home from captivity in the enemy's territory, one who was manumitted after the first or second mancipation, or had cause of error shown on his behalf—all these become self-successors, though none of them was in his father's power at the time of his death.

Failing sons or daughters, the self-successors of intestates are grandsons, granddaughters, great-grandsons, great-granddaughters, and remoter descendants in the male line provided that they have remained in their grandfather's power or in their great-grandfather's family, and have no surviving parents to bar their claims; for parents bar the succession of their children with whom they themselves have been in the power of the deceased.

Sons who remain in the family with grandsons begotten of another son, are called with their brother's children to the succession of their intestate father. As the children take their father's portion, the inheritance is divided according to stems, not according to the individuals entitled; and thus the son takes a half of the estate and the grandsons between them take the remaining half. The same principle applies if the self-successors are grandchildren by two sons, in unequal groups.

Grandsons by a daughter are not self-successors; for, as they belong in the male line to another family, they cannot, on that ground, be in their maternal grandfather's power.

The time for determining the self-successor is the moment when it has become certain that a person has died intestate; and this is definitely settled on failure of the condition of the will, or on the birth of a grandson, conceived in his grandfather's lifetime, and born after the death of his (father and subsequently of his) grandfather.

An emancipated son's child, whether begotten or adopted, cannot, any more than his father, obtain the status of a self-successor to his grandfather. An adoptive child cannot even claim Praetorian possession as a cognate.

Failing self-successors, the statutory succession will pass to the agnates; a class in which brothers and sisters occupy the first grade. Agnates are male cognates, tracing their descent through the male line; namely, a brother's son, a father's brother and the whole line of successors worked out on the same principle.

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cognatos hoc interest, [quod] in agnatis etiam cognati continentur, inter cognatos uero agnati non comprehenduntur. et ideo patruus agnatus est et cognatus, auunculus autem cognatus tantummodo est. consanguinei sunt eodem patre nati, licet diuersis matribus, qui in potestate fuerunt mortis tempore: 5 adoptiuus quoque frater, si non sit emancipatus, et hi qui post mortem patris nati sunt uel causam probauerunt. soror iure consanguinitatis tam ad fratris quam ad sororis hereditatem 16 admittitur. consanguineis non existentibus agnatis defertur hereditas, prout quis alterum gradu praecesserit. quod si plures 10 eodem gradu consistunt, simul admittuntur. si sint defuncti fratris et filius et nepos fratre non existente, filius fratris nepoti 19 praefertur. sed si duorum fratrum sint liberi, non in stirpes, sed in capita hereditas distribuitur, scilicet ut pro numero singulorum 20 uiritim distribuatur hereditas. feminae ad hereditates legitimas 15 ultra consanguineorum successiones non admittuntur: id quod iure ciuili Voconiana ratione uidetur effectum: ceterum lex duodecim tabularum sine ulla discretione sexus admittit.

XVI. 4, 1 Ulpianus libro singulari [regularum] sub titulo de legitimis hereditatibus:

Intestatorum ingenuorum hereditates pertinent primum ad 20 suos heredes, id est liberos qui in potestate sunt ceterosque qui liberorum loco sunt: si sui heredes non sunt, ad consanguineos, id est fratres et sorores ex eodem patre: si nec hi sunt, ad reliquos agnatos [proximos, id est cognatos] uirilis sexus per 25 mares descendentes eiusdem familiae. id enim cautum est lege duodecim tabularum hac: 'si intestatus moritur, cui suus heres nec escit, agnatus proximus familiam habeto.' si agnatus defuncti non sit, eadem lex duodecim tabularum gentiles ad heredi-

c. 3, 15-17. *From this passage, Paulus Sent., iv. 8, 15-17 is restored.*

c. 3, 18 = *Paulus Sent., iv. 8, 18.*

c. 3, 19. *From this passage, Paulus Sent., iv. 8, 19 is restored.*

c. 3, 20 = *Paulus Sent., iv. 8, 22.*

c. 4, 1 = *Ulpianus Reg., xxvi. 1.*

c. 4, 2. *From this passage, Ulpianus xxvi. 1a, is restored.*

Lines 4-5. *Consanguinei.....tempore.* Cp. above in this title, chap. 2, § 10.

Lines 7-9. *Soror.....admittitur.* Cp. above, chap. 2, § 14.

Lines 9-11. *Consanguineis.....admittuntur.* Cp. above, chap. 2, § 11, and Justinian's Institutes, iii, 2, § 5.

Lines 13-15. *Sed.....hereditas.* Cp. above, chap. 2, § 16.

Lines 15-18. *Feminae.....admittit.* Cp. above, chap. 2, § 14; Justinian's Institutes, iii, 2, § 3; Gaius, iii, 23, and Ulpian, xxvi. 6.

A distinction between cognates and agnates is, that agnates are necessarily cognates, but cognates need not be agnates. Thus, a father's brother is both an agnate and a cognate, but a mother's brother is a cognate only.

Consanguinei are children of the same father, even if of different mothers, provided they were in their father's power at his decease. Included in this class are an adopted brother who has not been emancipated, posthumous children, and those who have shown "excusable proof of error."

A sister is admitted, by right of consanguinity, to a share in her deceased brother's or sister's estate.

Where there are no brothers or sisters, the succession is offered to agnates in turn according to their degree of relationship to the deceased. If there are several of the same degree, they are admitted together to the succession. If the intestate's brother is deceased, and has left a son and a grandson by another son who is deceased, the brother's son is preferred to the grandson.

But if two brothers of the deceased have left children, the inheritance is divided, not according to stems but according to individuals; that is, the estate is distributed in equal shares among those entitled.

Female relatives beyond the grade of sisters, are not admitted to the statutory succession. This rule seems to have been an application, by the civil law, of the principle of the *Lex Voconia*: The Twelve Tables admit agnates without distinction of sex.

Ulpian, in his Single Book [of Rules], under the title "Of Statutory Succession":

The succession of intestates who belong to a gens devolves first to self-successors, that is children in power and others who stand in the position of children. Failing self-successors, it devolves to consanguineous relatives, that is, brothers and sisters by the same father; failing these, to the remaining [nearest] agnates, [that is, male cognates] of the same family, tracing descent from a common ancestor through the male line. For thus is it laid down in the following law of the Twelve Tables: "If one die intestate and has left no self-successor, let the nearest agnate have his estate."

If the deceased has no agnate, the same law of the Twelve

PAGE 144, line 21. *Ingenuorum*, with Huschke, following Ulpian. Mommsen retains *gentiliciorum* from the MSS., but the chapter does not deal primarily with gentile successions, but only as used in former ages as a last resort. Possibly the rare word *gentilicia* at the end of the chapter unconsciously influenced the scribe in substituting *gentiliciorum* here.

tatem uocat his uerbis: 'si agnatus nec escit, gentiles familiam [habento.' nunc nec ullus est] heres hinc nec gentilicia iura in usu sunt.

XVI. 5, 1 Idem [libro] institutionum . . . [sub titulo de successionibus] ab intestato: 5

Ab intestato quoque hereditas defertur aut per ius ciuile aut per praetoris beneficium: per ius ciuile suis heredibus uel liberis, qui in potestate fuerunt, [qui sunt] filii filiae et deinceps qui in locum defuncti parentis, quia ex eodem nati sunt, succedunt.

XVI. 6, 1 Idem eodem libro: 10

Post suos ab intestato legitimi admittuntur, primum consanguinei. [consanguinei] sunt frater et soror, qui in eiusdem potestate patris fuerunt, etsi ex diuersis matribus nati sunt. consanguineos et adoptio facit et adrogatio [et] causae probatio et in manum conuentio. 15

XVI. 7, 1 Idem eodem libro:

De[ficientibus] consanguineis legitimi uocantur. hi sunt agnati qui nos per patris cognitionem contingunt uirilis sexus: nam sciendum feminis ultra consanguineas hereditates legitimas non deferri. suis praetor solet emancipatos liberos itemque 20 ciuitate donatos coniungere data bonorum possessione, ita tamen, ut bona si qua propria habent, his qui in potestate manserunt conferant. nam aequissimum putauit neque eos bonis paternis carere per hoc, quod non sunt in potestate neque praecipua bona propria habere, cum partem sint ablaturi suis heredibus. 25

XVI. 8, 1 Idem libro qui supra [sub titulo] de suis heredibus:

Post agnatos praetor uocat cognatos: cognati autem sunt, qui nos per patrem aut matrem contingunt: post cognatos uirum

Line 4. *Institutionum*. Blume and Huschke supply from Pithou's conjecture, after this word *secundo*.

Lines 10-15. Cp. above, in this title, chap. 2, § 9, and chap. 3, §§ 15 and 16.

Lines 20-25. Cp. Gaius iii., §§ 19, 20 and 26; *ibid.* i., § 94; Justinian's Institutes, iii. 1, § 9, and *Digest* xxxvii. 6, l. 1 *pr.*

Line 21. *Data bonorum possessione*. Here the Vienna MS. ends.

Lines 22-23. *Ut bona si qua propria habent,conferant*. This refers to *Collatio Bonorum*, the doctrine of hotchpot. See Hunter's "Roman Law," pp. 849 and 850; Huschke explains the passage in a note: *Si quid superest, deducto aere alieno*: "After paying debts due from the estate they must hand over the balance to the unemancipated children." This is clearly an error.

Line 26. *De suis*. Blume and Huschke add *et legitimis*, as the chapter does not deal exclusively with self-successors.

Lines 27—page 148, line 1. *Post agnatos.....uxorem*. Cp. Gaius iii., § 27, and Justinian's Institutes iii., 2 § 3; *ibid.* iii., 9, § 3.

Tables calls Gentiles of the deceased to the succession in the following terms: "If there is no agnate, let the Gentiles have the estate."

At the present day, this would not constitute a title to succession, Gentile rights being obsolete.

The same jurist, in the [book] of his Institutes, [under the title of Successions] in Intestacy:

An intestate's estate devolves either under the civil law or by the praetor's grace; under the civil law, to self-successors, that is, descendants who were in the power of the deceased; these are a son, daughter, or remoter descendants who take the place of a deceased parent because they are his posterity.

The same jurist, in the same book:

Next to self-successors, statutory heirs are admitted to the succession in intestacy, and first *consanguinei*. *Consanguinei* are a brother and sister who were in the power of the same father, even though born of different mothers. The status of consanguinity is also the result of adoption, adrogation, "proof of error," and marital power.

The same jurist, in the same book:

Failing *consanguinei*, statutory heirs are called to the succession. These are agnates of the male sex, connected with us through paternal relationship; for statutory successions, be it known, do not devolve to female relatives beyond the grade of sisters.

The Praetor gives to emancipated children, and to those upon whom citizenship has been conferred, possession of the property conjointly with the self-successors, but with this proviso, that they bring into hotch-pot any property they have. For, in the opinion of the Praetor, it was but fair that, on the one hand, emancipated children should not be deprived of their father's estate, through not being in power, and on the other, that they should not retain their own property exempt from burdens, seeing that they will now be depriving self-successors of a portion of the estate.

The same jurist, in the same book as above, under the title "Of Self-Successors":

Next to agnates, the Praetor calls cognates. Cognates are those related either through father or mother. Next to cognates, he calls husband and wife.

XVI. 8, 2 et uxorem. et haec, si qui decessit non fuit libertinus uel stirpis
libertinae: ceterum si libertinus est uel libertina, patrono eius
legitima hereditas patronaeue lege duodecim tabularum defertur.

XVI. 9, 1 Idem eodem libro:

Post familiam patroni uocat praetor patronum et patronam, 5
item liberos et parentes patroni et patronae, deinde uirum et
2 uxorem, mox cognatos patroni et patronae. quod si is qui
decessit liber fuit [nec] ex remancipatione manumissus, lex
quidem duodecim tabularum manumissori legitimam hereditatem
detulit, sed praetor aequitate motus decem personas cognatorum 10
ei praetulit has: patrem matrem, filium filiam, auum auiam,
nepotem neptem, fratrem sororem, ne quis occasione iuris san-
3 guinis necessitudinem uinceret. sed imperator noster in heredi-
tatibus quae ab intestato deferuntur eas solas personas uoluit
admitti, quibus decimae immunitatem ipse tribuit. 15

Lines 1-2. *Et haec.....libertinae.* Cp. Justinian's Code vi. 4, l. 4, § 23.

Lines 5-15. *Post familiam.....tribuit.* Cp. Ulpian, xxviii. 7, and Justinian's Institutes, iii. 9, §§ 3, 5.

Line 8. (*Nec*) *ex remancipatione manumissus.* Huschke has *ex (mancipatione citra remancipationem manumissus. Citra remancipationem=sine remancipatione.* Schulting has *absque remancipatione.*

Lines 5-13. According to the Praetor's extension of the area of succession, the relatives of the patron succeeded in the following order (*Theoph. J.*, iii. 9, 1):—

1. When a freedman or freedwoman died intestate and childless after the death of the patron, then the agnates of the patron succeeded (*tum quem ex familia*).

2. In default of these came the children or parents of the patron (*patronus, patrona*). Theophilus explains this case as follows:—If the children or parents neglected to take as such after the children of the freedman (*unde legitimi*), and the time for asking the *bonorum possessio* had passed, and they had not asked under the immediately preceding head (*tum quem ex familia*), then either the patrons or their children or parents could come in under this second description (*unde liberi patroni patronaeque et parentes eorum*).

3. In default of all these, the cognates of the patron took, the nearer excluding the more remote. (Hunter's Roman Law, p. 869). These rules do not apply to one who was free, e.g., a *filius familias*, who had been mancipat, manumitted and re-mancipated.

These rules only apply when the deceased had not been a freedman or of freedman's stock. In case the deceased was a freedman or freedwoman, the statutory succession devolves, under the Twelve Tables, to the patron or patroness.

The same jurist in the same book :

Next to the patron's family, the Praetor calls the patron and patroness, their children and the patron's and patroness's parents ; then husband and wife, and then the patron's and patroness's cognates.

If the deceased was a freeman but [had not been] manumitted after remancipation, the law of the Twelve Tables offered the statutory succession to the manumitter. But the Praetor, on equitable grounds, gave the preference to the following ten classes of relative : father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, so that no one shall use the law to override the claims of blood relationship.

The Emperor decided to admit to succession in cases of intestacy only those persons to whom he himself accorded the exemption from the succession duty of a tenth of the value of the estate.

PAGE 148, lines 13-15. Caracalla raised the succession duty on testamentary successions and legacies from 5 per cent. (at which it had been fixed by the *Lex Julia de Vicesima hereditatum*, 6 c.E.) to 10 per cent. This *Lex Julia* exempted, however, Roman parents and children from payment of this duty. Nerva extended the exemption to mothers and their children, *etiam si cognationum iura non recepissent*. Trajan freed the *decem personae* and relatives to the sixth degree, and also *peregrini*, if they had *justi liberi* by a Roman citizen. All this applied to testate succession. Caracalla increased the succession duty ; abolished all the immunities mentioned above, except to those he favoured (probably parents and children who had originally been exempted by the *Lex Julia*) ; and entirely abrogated intestate succession, except to this favoured class. The result was that the revenue from the duty paid on succession, under will, was doubled, and, in cases of intestacy, much property became *caducous* (see *Dio Cassius* 77, 9).

Lines 13-15. *Imperator noster.....tribuit*. Mommsen thinks that the MS. is incomplete. I am inclined to believe with Huschke, that this last sentence, stating the Emperor's decision, marks the conclusion of the book.

COMPARISON OF BIBLICAL
TEXTS IN THE COLLATIO,
VULGATE AND ITALIA.

A COMPARISON OF BIBLICAL TEXTS IN THE COLLATIO, VULGATE AND ITALIA.

| VULGATE. | COLLATIO. | ITALA. |
|---|---|---|
| <p>Num. xxxv. 16, 17.</p> <p>16. Si quis ferro percusserit, et mortuus fuerit qui percussus est : reus erit homicidii, et ipse morietur.</p> <p>17. Si lapidem iecerit, et ictus occubuerit : similiter punietur.</p> | <p>I., i. 1, 2.</p> <p>Si quis percusserit hominem ferro et occiderit eum, mortem moriatur. si autem manu lapide, quo mori possit, percusserit et mortuus fuerit, homicida est : mortem moriatur.</p> | <p>Num. xxxv. 16, 17.</p> <p>Ex Lugdunensi :</p> <p>Si autem ferro percusserit eum et mortuus fuerit, homicida est : morte puniatur homicida. si autem lapide manu percusserit, quo mori possit et mortuus fuerit, homicida est : morte puniatur homicida.</p> |
| <p>Num. xxxv. 20, 21.</p> <p>20. Si per odium quis hominem impulerit, uel iecerit quidpiam in eum per insidias :</p> <p>21. Aut cum esset inimicus, manu percusserit, et ille mortuus fuerit : percussor, homicidii reus erit. cognatus occisi statim ut inuenerit eum, ingulabit.</p> | <p>I., i. 3, 4.</p> <p>Si autem per inimitiam impulerit eum uel inmisit super eum aliquod uas ex insidiis et mortuus fuerit uel per iram percusserit eum manu et mortuus fuerit, mortem moriatur.</p> | <p>Num. xxxv. 20, 21.</p> <p>Ex Lugdunensi :</p> <p>Si autem per inimitiam impulerit eum et inmisit super eum omne uas ex insidia, et mortuus fuerit, uel per iram percusserit eum de manu, et mortuus fuerit, morti moriatur qui percusserit : homicida est : morti puniatur homicida.</p> |
| <p>Num. xxxv. 22-25.</p> <p>22. Quod si fortuito, et absque odio,</p> <p>23. et inimitiis quidquam horum fecerit,</p> <p>24. et hoc audiente populo fuerit comprobatum, atque inter percussorem et propinquum. sanguinis quaestio uentilata :</p> <p>25. liberabitur innocens de ultoris manu, et reducetur per sententiam in urbem, ad quam confugerat, manebitque ibi, donec sacerdos magnus, qui oleo sancto unctus est, moriatur.</p> | <p>I., v. 1-4.</p> <p>Si autem subito non per inimitias inmisit super eum aliquod uas non insidians uel lapidem, quo moriatur, non per dolum et ceciderit super eum et mortuus fuerit, si autem non inimicus eius fuerit neque quaesierit male facere ei, iudicabitur inter eum qui percussit, et proximum mortui secundum iudicia haec et liberabitur percussorem.</p> | <p>Num. xxxv. 22-25.</p> <p>Ex Lugdunensi :</p> <p>Si autem subito non per inimitiam inmisit super eum omne uas non ex insidia, uel omnem lapidem, quo moriatur, non per dolum, et occiderit super eum et mortuus fuerit, is autem non inimicus eius fuerit neque quaesierit male facere ei, et iudicabitur synagoga inter eum qui percusserit et proximum sanguinis secundum iudicia haec et liberabitur synagoga percussorem a proximo sanguinis.</p> |

BIBLICAL TEXTS.

| VULGATE. | COLLATIO. | ITALA. |
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| <p style="text-align: center;">Exod. xxi. 18, 19.</p> <p>18. Si rixati fuerint uiri, et percusserit alter proximum suum lapide uel pugno. Et ille mortuus non fuerit, sed iacuerit in lectulo :</p> <p>19. Si surrexerit, et ambulauerit foris super baculum suum, innocens erit qui percusserit, ita tamen ut operas eius, et impensas in medicos restituat.</p> | <p style="text-align: center;">II., i. 1, 2.</p> <p>Si autem contenderint duo uiri et percusserit alter alterum lapide aut pugno et non fuerit mortuus, decubuerit autem in lectulo, et si surgens ambulauerit homo foris in baculo, sine crimine erit ille, qui eum percusserat praeter ac cessationis eius mercedem dabit ei et medico impensas curationis.</p> | <p style="text-align: center;">Exod. xxi. 18, 19. Ex Lugdunensi.</p> <p>Si autem litigauerint duo uiri et percusserit quis proximum suum lapide aut ligno et non fuerit mortuus, decubuerit autem in lecto, et si surgens ambulauerit homo foris cum baculo, innocens erit ille qui percusserit eum : uerumtamen quod cessauit et medico curam illius dabit.</p> |
| <p style="text-align: center;">Exod. xxi. 20, 21.</p> <p>Qui percusserit seruum suum uel ancillam uirga, et mortui fuerint in manibus eius, criminis reus erit. Sin autem uno die uel duobus superuixerit, non subiacebit poenae, quia pecunia illius est.</p> | <p style="text-align: center;">III., i. 1, 2.</p> <p>Si quis percusserit seruum aut ancillam uirga et mortuus fuerit in manibus eius, iudicio uindictetur. quod si superuixerit die uno aut duobus, non uindicabitur, pretium enim ipsius est.</p> | <p style="text-align: center;">Exod. xxi. 20, 21. Ex Lugdunensi.</p> <p>Si quis autem percusserit seruum suum aut ancillam suam de fuste, et mortuus fuerit sub manus eius, iudicio uindictetur. Si uero superuixerit die uno uel duobus, non uindicabitur : pretium enim illius est.</p> <p style="text-align: center;">Augustinus Spec. c. 58.</p> <p>Si autem rixabuntur duo uiri et percusserit aliquis ex his proximum suum lapide aut pugno aut ferro et non fuerit mortuus, decubuerit autem in lecto suo, et si exsurrexit homo et ambulauerit cum baculo, innocuus erit qui percussit : tantum quod cessationes eius dabit et curationes. si quis autem percusserit seruum suum aut ancillam suam uirga et mortuus fuerit sub manu eius, iudicio uindictetur : si uero superuixerit diem unum uel duos, non uindicabitur, pretium enim eius est.</p> |

BIBLICAL TEXTS.

| VULGATE. | COLLATIO. | ITALA. |
|---|---|--|
| <p style="text-align: center;">Leuit. xx. 10.</p> <p>Si moechatus quis fuerit cum uxore alterius, et adulterium perpetraverit cum coniuge proximi sui, morte moriantur et moechus et adultera.</p> | <p style="text-align: center;">IV., i. 1.</p> <p>Quicumque moechatus fuerit mulierem proximi sui, mortem moriatur qui moechatus fuerit et quae moechata fuerit.</p> | <p style="text-align: center;">Exod. xxi. 21. Augustinus locut. in Exodo II. 99 (3, p. 347D) :</p> <p>Si quis percusserit servum suum aut ancillam suam in uirga.</p> <p style="text-align: center;">Leuit. xx. 10. Augustinus quaest. in Leuit. III. 83 (3, p. 521B) :</p> <p>Homo quicumque adulterauerit uxorem uiri aut quicumque adulterauerit uxorem proximi sui, morte moriantur.</p> |
| <p style="text-align: center;">Deut. xxvii. 21.</p> <p>Maledictus qui dormit cum omni iumento. et dicet omnis populus : Amen.</p> | <p style="text-align: center;">VI., vii. 9.</p> <p>Maledictus, qui dormierit cum omni pecore.</p> | <p style="text-align: center;">Deut. xxvii. 21. Augustinus locut. de Jesu Naue. VI. 59 (3, p. 369A) :</p> <p>Maledictus omnis qui dormierit cum omni pecore.</p> |
| <p style="text-align: center;">Exod. xxii. 2, 3.</p> <p>2. Si effringens fur domum siue suffodiens fuerit inuentus, et accepto ulnere mortuus fuerit ; percussor non erit reus sanguinis.</p> <p>3. Quodsi orto sole hoc fecerit, homicidium perpetravit et ipse morietur. si non habuerit quod pro furto, reddat, ipse uenundabitur.</p> | <p style="text-align: center;">VII., i. 2.</p> <p>Si perfodiens nocte parietem inuentus fuerit fur et percusserit eum alius et mortuus fuerit hic, non est homicida is qui percusserit eum.</p> <p>Si autem sol ortus fuerit super eum, reus est mortis percussor : et ipse morietur.</p> | <p style="text-align: center;">Exod. xxii. 2, 3. Augustinus quaest. in Exod. II. 84 (3, p. 449D) :</p> <p>Si autem perfodiens inuentus fuerit fur et percussus mortuus fuerit, non est illi homicidium : si autem orietur sol super eum, reus est : pro morte morietur.</p> |

BIBLICAL TEXTS.

| VULGATE. | COLLATIO. | ITALA. |
|---|---|--|
| <p style="text-align: center;">Deut. xix. 16, 20.</p> <p>16. Si steterit testis mendax contra hominem, accusans eum praeuaricationis.</p> <p>20. Ut audientes ceteri timorem habeant et nequaquam talia audeant facere.</p> | <p style="text-align: center;">VIII., i. 1-5.</p> <p>Si steterit testis iniustus aduersus hominem accusandum accusans eum impietatis, stabunt duo homines, quibus est inuicem contentio, ante deum et ante sacerdotes et ante iudices, quicumque fuerint in illis diebus. cum inquisierint iudices diligenter et inuentus fuerit testis iniustus testificans iniusta, insurgentes aduersus eum facietis ei, sicut uoluit malefacere et delebitis malum de medio uestrum : et ceteri audientes timebunt nec audebunt haec mala facere inter uos.</p> | <p style="text-align: center;">Deut. xix. 16, 20.</p> <p>Lucifer de Athanasio, 1. 7 : Si autem steterit testis iniustus aduersus hominem detrahens ei iniquitatem, stabunt duo homines, quibus est ipsis contradictio, ante dominum et ante sacerdotem et in conspectu iudicii quicumque fuerit in diebus illis et interrogabunt diligenter iudices et ecce testis iniustus testificatus est iniqua resistens aduersus fratrem suum et facite ei, quemadmodum nequiter egit facere aduersus fratrem suum et auferes iniquum ex uobis ipsis, et ceteri audientes timebunt et non adponent amplius facere uerbum malignum.</p> |
| <p style="text-align: center;">Exod. xx. 16.</p> <p>Non loqueris contra proximum tuum falsum testimonium.</p> | <p style="text-align: center;">IX., i. 1.</p> <p>Falsum testimonium non dabis aduersus proximum tuum.</p> | <p style="text-align: center;">Exod. xx. 16.</p> <p>Augustinus Quaest. in Exod. II. 71, 6 (3, p. 415B) : Falsum testimonium non dices aduersus proximum tuum. Lucifer de Athanasio 1, 3. Non falsum testimonium dices aduersus proximum tuum. Augustinus Spec. c. 42. Non dices falsum testimonium aduersus proximum tuum.</p> |
| <p style="text-align: center;">Exod. xxii. 7, 8.</p> <p>7. Si quis commendauerit amico pecuniam, aut uas in custodiam, et ab eo, qui susceperat, furto ablata fuerint : si inuenitur fur, duplum reddet.</p> <p>8. Si latet fur, dominus domus applicabitur ad deos, et iurabit quod nonenderit manum in rem proximi sui.</p> | <p style="text-align: center;">X., i. 1.</p> <p>Si aliquis dabit proximo suo argentum aut uas seruare, et furatum fuerit de domo hominis, si inuenitur qui furatus est, reddet duplum, quod si non fuerit inuentus fur, accedet is qui commendatum susceperat ante dominum et iurabit nihil se nequiter egisse de omni re commendata proximi sui et liberabitur.</p> | <p style="text-align: center;">Exod. xxii. 7, 8.</p> <p>Ex Wirceburgensi. . . . fuerit de domo hominis si inuentus fuerit, fur reddet duplum : quod si non fuerit inuentus fur, accedet d(o)m-(inu)s domus in conspectu dei et iurabit nihil maligne fecisse ex omni commerdato proximi aut de omni re qua accusabitur.</p> |

BIBLICAL TEXTS.

| VULGATE. | COLLATIO. | ITALA. |
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| Exod. xxii. 1. | XI., 1, 1. | Exod. xxii. 1. |
| Si quis furatus fuerit bouem aut ouem, et occiderit uel uendiderit : quinque boues pro uno boue restituet, et quatuor oues pro una oue. | Si quis inuolauerit uitulum aut ouem et occiderit aut uendiderit, quinque uitulos restituet pro uitulo uno, quattuor oues pro oue una. quod si non habet unde reddat, uenundetur pro furto, | Augustinus quæst. in Num. IV. 10 (3, p. 531C) : In Exodo dicitur si quis furatus fuerit uitulum aut ouem, restituere debere quinque uitulos uel quattuor oues, si occiderit aut uendiderit. Augustinus spec. c. 74 : Quod si quis inuolauerit uitulum aut ouem et occiderit eum aut uendiderit, quinque uitulos reddet pro uno uitulo et quattuor oues pro una oue. quod si pauper est et non habet unde reddat, ueniat pro furto. |
| Deut. xviii. 10-14. | XV., 1, 1-5. | Deut. xviii. 10-14. Hieronymus contra Pelag, I. 36, p. 721 Vall : |
| 10. Nec inueniatur in te qui lustret filium suum, aut filiam ducens per ignem : aut qui ariolos sciscitetur, et obseruet somnia atque auguria, nec sit maleficus. 11. Nec incantator, nec qui pythones consulat, nec diuinos, aut quaerat a mortuis ueritatem. 12. Omnia, enim haec abominatur Dominus, et propter istiusmodi scelera delet eos in introitu tuo. 13. Perfectus eris, et absque macula cum Domino Deo tuo. 14. Gentes istae, quarum possidebis terram, augures et diuinos audiunt : tu autem a Domino Deo tuo aliter institutus es. | Non inueniatur in te qui lustret filium tuum aut filiam tuam, nec diuinus apud quem sortes tollas : nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. nec intendas prodigia, nec interrogas mortuos. (Non inueniatur in te auguriator nec inspector auium nec maleficus aut incantator nec pythonem habens in uentre nec haruspex nec interrogator mortuorum nec portenta inspiciens) : omnia namque ista a domino deo tuo damnata sunt et qui fecerit haec. propter has enim abominationes deus eradicabit Chaldaeos a facie tua. tu autem perfectus eris ante dominum deum tuum : Gentes enim istae, quas tu possides, auguria et sortes et diuinationes audiebant. | Nec inueniatur in te qui trahat filium uel filiam suam per ignem diuinationibus et ominibus (al. uel omnibus) auguriis et maleficis artibus et incantationibus non seruiens, ut interrogas magos et harios et mortuos, abominatio enim domini est omnis qui facit haec et propter has abominationes dominus deus tuus consumet eas a facie tua : perfectus eris cum domino deo tuo . . . gentes istae quas tu possidebis harios et diuinos audiunt, tibi autem non sic dedit dominus deus tuus. Augustinus Spec. c. 55 : Non inueniatur in te lustrans filium suum aut filiam in igne et diuinans diuinationem augurans et aruspicans et medicaminibus infuscans, incantator, ventriloquus et portenta inspiciens et interrogans mortuos : est enim abominandum domino deo tuo et omnis qui facit haec : propter has enim abominationes dominus eradicabit eos a te. tu autem consummatus eris coram domino deo tuo : gentes enim istae quas tu possidebis auguria et diuinationes audiunt, tibi autem non ita dedit dominus deus tuus. |

BIBLICAL TEXTS.

| VULGATE. | COLLATIO. | ITALA. |
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| Num. xxvii. 2-11. | XVI., 1, 1-8. | Num. xxvii. 2-11. Ex Lugdunensi: |
| <p>2. Steteruntque coram Moyse et Eleazaro sacerdote, et cunctis principibus populi ad ostium tabernaculi foederis, atque dixerunt:</p> <p>3. Pater noster mortuus est in deserto, nec fuit in seditione, quae concitata est contra Dominum sub Core, sed in peccato suo mortuus est:</p> <p>hic non habuit mares filios. Cur tollitur nomen illius de familia sua, quia non habuit filium?</p> <p>Date nobis possessionem inter cognatos patris nostri.</p> <p>4. Retulitque Moyses causam earum ad iudicium Domini.</p> <p>5. Qui dixit ad eum.</p> <p>6. Justam rem postulant filiae Salphaad:</p> <p>da eis possessionem inter cognatos patris sui.</p> <p>6. Et ei in hereditatem succedant.</p> <p>7. Ad filios autem Israel loqueris haec.</p> <p>8. Homo cum mortuus fuerit absque filio, ad filiam eius transibit hereditas.</p> <p>9. Si filiam non habuerit, habebit successores patres suos.</p> <p>10. Quodsi et fratres non fuerint, dabitur hereditatem fratribus patris eius.</p> <p>11. Sin, autem nec patruos habuerit, dabitur hereditas, his, qui ei proximi sunt eritque hoc filiis Israel sanctum lege perpetua.</p> <p>Sicut praecepit Dominus Moysi.</p> | <p>Filiae Salfad adstantes ante Moysen et Eleazarum sacerdotem et principes omnemque senatum filiorum Israel in foribus tabernaculi testimonii dixerunt: pater noster mortuus est et filii non fuerunt ei, sed filiae, et ideo non deleatur nomen patris nostri de medio tribus suae. non est ei masculus: date nobis possessionem in medio fratrum patris nostri. et obtulit Moyses petitionem earum coram deo. et locutus est dominus Moysi dicens: recte filiae Salphad locutae sunt: et ideo dabitur eis possessionem hereditatis in medio fratrum patris earum. et dices haec filiis Israel: homo si decesserit et filium non habuerit . . . dabitur hereditatem proximo eorum de tribu eius: et possidebit omnia eius: et erit haec filiis Israel iustificatio iudiciorum secundum quae constituit dominus Moysi.</p> | <p>Et accesserunt filiae Salpaat et stantes contra Eleazar sacerdotem et contra principes in omnem synagogam ad ostium tabernaculi testimonii dixerunt: pater noster mortuus est in deserto et filii non fuerunt et non deleatur nomen patris nostri de media plebe eius, quia non est filius: date nobis possessionem in medio fratrum patris nostri. et obtulit Moyses iudicium earum contra dominum et locutus est dominus ad Moysen dicens: recte filiae Salpaat locutae sunt: datam dabis eis possessionem hereditatis in medio fratrum patris earum . . . et filiis Israel loqueris dicens: homo si decesserit et filios non habuerit . . . dabitur hereditatem domestico proximo ipsius de tribu ipsius et possidebit quae sunt ipsius, et erit haec filiis Israel iustificatio iudiciorum secundum quae constituit dominus Moysi.</p> |

ADDITIONAL NOTES (JEWISH LAW).

NOTE ON TITLE III. DE SÆVITIA DOMINORUM (COHIBENDA).

In the treatment of slaves, Jewish Law (Biblical and Talmudical) stood on a higher plane than Roman Law. As we see from the Biblical text at the head of this title, the Hebrew master never had the *jus vitæ necisque potestas*. A characteristic feature of the Mosaic Law, not noted in the Collatio, is that the infliction by the master of a permanent injury entitled the slave to freedom. "And if a man smite the eye of his servant, or the eye of his maid, that it perish, he shall let him go free for his eye's sake. And if he smite out his manservant's tooth or his maidservant's tooth, he shall let him go free for his tooth's sake" (Exodus xxi. 26-27). The Talmudical Law went still further in favour of the slave. According to the Scriptural text (Exod. xxi. 20-21) the master was not punished, if the slave did not die under his hand but survived for a day or two. According to the Rabbis, this was only so, if the instrument used was not a lethal weapon and the mode of chastisement was not likely to cause death; otherwise the master was liable for murder even if the slave died more than a year after the chastisement. (*Sifri* to the last weekly portion in the book of Numbers; Maimonides' Code, Laws of Murder, chap. ii., paragraph 10.)

According to the Talmud (T. B. Kiddushin 24 b) the slave obtained his freedom if he sustained a permanent injury inflicted by his master even *involuntarily*, e.g., if a physician failed to cure an ocular affection of his slave so that he lost the use of his eye.

Of course, these rules applied, it must be understood, to Gentiles who were acquired by capture in war or by purchase. A Hebrew could not become a slave to a Hebrew, but only a bondman, *liber serviens*, for a definite period—six years or till the year of the Jubilee. A Hebrew might sell his services, or they might be assigned by the Court, in case he was unable to pay the value of what he had stolen (Exodus xxi. 1-6). "He shall serve him for ever" (*ibid.* v. 6) is explained to mean till the year of the Jubilee. The Biblical Law also gave protection to fugitive slaves: their surrender to their owners was forbidden. "Thou shalt not deliver to his master the slave which is escaped

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from his master unto thee. He shall dwell with thee, even among you, in that place which he shall choose, in one of thy gates, where it liketh him best; thou shalt not oppress him " (Deuteronomy xxiii. 15-16).

NOTE ON TITLES VIII. AND VIII.

To prove a disputed fact there must be at least two witnesses testifying to the same fact. "By the mouth of two or three witnesses the matter shall be established. It shall not be established by the mouth of one witness." The witnesses must not be blind, deaf, insane, or under the age of puberty (*Baba Bathra* 135b). They must not be open transgressors or people of disreputable character, *e.g.*, those who make their livelihood by dicing, usury, pigeon-flying (Mishna, Sanhedrin iii. 3).

Relationship to the parties to the suit, by blood, or (according to the later tradition) even by affinity, is a disqualification (Mishna, Sanhedrin iii. 4). According to the view of the Palestinian Talmud, *in loco*, witnesses must not be related to each other.

NOTE ON TITLE X.—ON DEPOSIT.

Four classes of *Bailees* are enumerated in the Mishna, *Baba Metzia*, vii. 8 and *Shebuoth* viii. 1: gratuitous depositary, paid depositary, hirer, and gratuitous borrower for use. The gratuitous borrower for use is liable for every kind of loss, even that arising from *vis major* (Exod. xxii. 10: "If it die, or be hurt, or driven away"). He is not liable if the destruction of the deposit is due to reasonable use, *e.g.*, if an ox, borrowed for the plough, died from work, provided it was not overworked by the borrower (Talmud, *Baba Metzia*, 96b); nor is he liable in any case, if the owner of the animal was with it during the time it was in the borrower's custody (Exod. xxii. 15: "But if the owner thereof be with it, he shall not make it good").

The gratuitous depositary is exempt from all liability, provided he takes an oath that he has not used the deposit or fraudulently made away with it, and it is not in his possession. "Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof, and he shall not make it good" (Exod. xxii. 11). He is, however, liable if he has not put it in a safe place (*Baba Metzia*, chap. iii. 10).

ON JEWISH LAW.

The paid depositary and the hirer are liable for all losses, except those arising from *vis major*, or the act of God; e.g., an attack by robbers or wild beasts, or fire (*Baba Metzia*, vii. 8).

It is to be noted that the rabbinical exegesis takes Exod. xxii. 10, 11 to refer to a gratuitous depositary; *ibid.* 12, 13 to paid depositary or hirer, and *ibid.* 14-15 to a gratuitous borrower for use.

NOTE ON TITLE XVI.

The order of succession in intestacy is: first, sons (eldest son taking a double portion), their descendants; daughters, their descendants. Failing issue, the father succeeds, then brothers (*Baba Bathra*, viii. 2). Sisters come after brothers and their descendants (*ibid.*). If a son dies in his father's life-time, grandchildren succeed to their father's share in the estate of their grandfather (*B. B. Gemara*, 122b). A man is his mother's heir, the husband is the wife's heir, but the wife is not her husband's heir. She has, however, her dower. Illegitimacy is no bar to inheritance or transmission. Recognition by father is accepted as proof that they are his children (*ibid.* viii. 6). Hotchpot was not recognised in Jewish Jurisprudence (*B. B.*, viii. 8).

SPECIMENS OF ORTHOGRAPHICAL ERRORS IN THE CODICES.

*Those marked * are also in the variants, where others of the same class will be found.*

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|-----------------------|------------|------|---|--|--|
| <i>a for e</i> | Page | Line | | | <i>*abaristi</i> |
| | 62 | 19 | | | |
| <i>ae for e</i> | 62 | 15 | <i>optimae</i> | | |
| | 70 | 21 | <i>iustae</i> | | |
| | 70 | 21 | <i>cognoscae</i> | | |
| | 108 | 4 | | | <i>paenis (penes)</i> |
| | 118 | 20 | <i>uidilicaet</i> | | |
| | 128 | 24 | <i>*quiaetem</i> | | |
| | 130 | 21 | <i>nuperrimae</i> | | |
| <i>e for ae</i> | passim | | <i>hec que etatis ad-</i> <i>misse</i> | <i>also frequently</i> <i>in this MS.</i> | <i>also frequently</i> <i>in this MS.</i> |
| | 68 | 26 | <i>cesus</i> | | |
| | 78 | 26 | <i>quero</i> | | |
| | 82 | 24 | <i>*flamme</i> | | <i>*flamme</i> |
| | 62 | 6 | <i>pre for prae, e. g.</i> <i>preuita (praebita)</i> | | |
| | 88 | 31 | <i>extimet (aestimet)</i> | | |
| | 102 | 5 | <i>questum</i> | | |
| | 120 | 8 | <i>queri</i> | | |
| | 120 | 23 | <i>mansuete</i> | | |
| | 126 | 23 | <i>iste</i> | | |
| <i>e or ae for oe</i> | 88 | 4 | <i>obedire</i> | <i>obedire</i> | <i>obèdire</i> |
| | 92 | 13 | | <i>pena</i> | |
| | 94 | 19 | | | <i>paena</i> |
| | 98 | 8 | <i>penam</i> | | <i>penam</i> |
| | 110 | 24 | <i>paena</i> | | |
| <i>e for a</i> | 62 | 17 | | <i>ietitur (iactatur)</i> | <i>iettitur</i> |
| <i>e for i</i> | 56 | 21 | | | <i>uendicari</i> |
| | 60 | 26 | | | <i>prestetit</i> |
| | 66 | 4 | <i>*cederet (sciderit)</i> | | |
| | 76 | 19 | <i>treginta</i> | | |
| | 84 | 23 | | | <i>impedet</i> |
| | 86 | 30 | <i>seuerissemæ</i> | | |

SPECIMENS OF ERRORS IN THE CODICES.

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|--|------------|------|--------------------------------|------------|---|
| | Page | Line | | | |
| <i>e</i> for <i>i</i> (<i>cont.</i>) | 88 | 18 | preuigna | | |
| | 122 | 22 | uindederit (uindi- derit) | | |
| | 118 | 29 | *tamen (tam in) | *tamen | *tamen |
| <i>e</i> for <i>o</i> | 118 | 14 | *precessit | *precessit | *precessit |
| <i>ii</i> for <i>i</i> | passim. | | subiicio | subiicio | subiicio |
| <i>i</i> for <i>e</i> | 72 | 16 | dioclitiano | | |
| | 76 | 4 | | | interficērit |
| | 90 | 5 | dirimerint | dirimerint | dirimerint |
| | 102 | 27 | | susciperat | |
| | 124 | 25 | uindiderit | | |
| | 118 | 20 | uidilicet | | |
| <i>i</i> for <i>t</i> | 86 | 7 | | *sancieque | |
| <i>o</i> for <i>a</i> | 126 | 21 | | | *obominationes |
| <i>o</i> for <i>i</i> | 116 | 25 | *doceret | *doceret | |
| <i>o</i> for <i>u</i> | 76 | 8 | | | calomnie |
| | 78 | 30 | poniatur | | |
| | 86 | 25 | pecodum | pecodum | |
| | 88 | 33 | anolino | | |
| | 108 | 20 | *pretexto | *pretexto | *pretexto |
| | 116 | 12 | ponitionum (puniti in text) | | |
| | 116 | 14 | grado | | |
| | 120 | 4 | forum | forum | |
| | 128 | 15 | contomacium | | |
| | 140 | 18 | foriosus | | |
| | 128 | 5 | | | seductos (sed uetus in text) |
| <i>oe</i> for <i>e</i> | 96 | 11 | poenes | } poenes | poenes |
| | 108 | 4 | | | |
| | 108 | 8 | | | |
| | passim. | | | | coep- for cep- (accoeperit, concoepus suscoepisae, cet,) etc. |
| <i>oe</i> for <i>o</i> | 66 | 4 | *loeris | | |

SPECIMENS OF ERRORS IN THE CODICES.

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|---|------------|--------|------------------------|-------------|--|
| <i>oe</i> for <i>u</i> | Page | Line | | | |
| | 122 | 7 | | *inpoenae | |
| <i>u</i> for <i>o</i> | 56 | 7 | sacerdus | | humicidam |
| | 78 | 21 | | | humicida |
| | 78 | 30 | | | |
| | 120 | 4 | cummunem | | |
| | 122 | 18, 19 | fortuitu | fortuitu | |
| | 126 | 17 | *auguriatur | | |
| | 126 | 19 | interrogatur | | |
| | 134 | 13 | nepus | | |
| | 140 | 2 | | | { praeturi (prae- torio, praeto- riam) |
| | 140 | 15 | | | |
| <i>ui</i> for <i>i</i> | 74 | 4 | *domui | | |
| <i>Redundant or added Consonants.</i> | | | | | |
| <i>C</i> | 58 | 28 | | instrinexit | |
| | 88 | 24 | | deuinexit | deuinexit |
| | 118 | 17 | *uecturiae | | |
| | 124 | 24 | | *uincxerit | |
| | 128 | 8 | *sic | | |
| | 60 | 17 | siccariis | | |
| | 130 | 4 | | affricae | |
| <i>f</i> | passim | | | | necleg |
| <i>g</i> | 82 | 17 | | aggrestit | |
| | 86 | 22 | } hac | | |
| | 86 | 25 | | | |
| <i>h</i> | 86 | 27 | | hac | hac |
| | 108 | 11 | | | |
| | 78 | 8 | necisque (necisque) | | |
| | 82 | 14 | archadius | archadius | archadius |
| | 86 | 32 | | antehactum | |
| | 100 | 5, 6 | cohierit | cohierit | cohierit |

SPECIMENS OF ERRORS IN THE CODICES.

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|----------------------------|------------|---------|---------------------|---------------------|------------------|
| <i>h</i> (cont.) | Page | Line | | | |
| | 92 | 19 | | | |
| | 102 | 26 | <i>his</i> | <i>his</i> | <i>his</i> |
| | 104 | 23 | | | |
| | 106 | 17 | | | |
| | 108 | 1 | | | |
| | 106 | 9 | <i>hortum</i> | | |
| | 106 | 9 | <i>hordinem</i> | | |
| | 122 | 4 | | | |
| | 110 | 18 | <i>habigunt</i> | | |
| | 114 | 24 | <i>hareas</i> | | |
| | 116 | 4 | <i>holiuarum</i> | | |
| <i>l</i> | 134 | 28 | | posthumi | |
| | | passim. | | adhire | |
| | frequently | | <i>coherc-</i> | <i>coherc-</i> | <i>coherc-</i> |
| <i>l</i> | 92 | 15 | <i>*tello</i> | | |
| | 118 | 14 | <i>*legit</i> | <i>*legit</i> | <i>*legit</i> |
| <i>m</i> | 114 | 1 | <i>consummi</i> | <i>consummi</i> | |
| <i>n</i> | 64 | 23 | | <i>mannumittere</i> | |
| <i>p</i> | 58 | 27 | | | <i>dampnatur</i> |
| <i>r</i> | 126 | 3 | <i>*uendidedrit</i> | | |
| | 128 | 31 | <i>*renuntiant</i> | | |
| <i>s</i> | 134 | 22 | <i>*manus</i> | | |
| | 138 | 13 | <i>exstet</i> | | |
| | 146 | 9 | | <i>succesdunt</i> | |
| <i>s</i> | 64 | 12 | <i>*fortis</i> | | |
| | 112 | 17 | | <i>betticae</i> | <i>betticae</i> |
| <i>x</i> | 64 | 17 | | | <i>exstimare</i> |
| <i>Omitted Consonants.</i> | | | | | |
| <i>c</i> | 68 | 13 | <i>*conple..ti</i> | | |
| | 68 | 20 | <i>*ne..qua</i> | | |
| <i>d</i> | 108 | 13 | <i>*a..misso</i> | | |
| <i>f</i> | 86 | 22 | <i>*a..fectos</i> | | |

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| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|-----------------|---------------|------|------------------|------------------|------------------|
| | Page | Line | | | |
| <i>f</i> | 94 | 22 | ef..ractores | ef..ractores | |
| <i>h</i> | 60 | 27 | per..orrescat | | per..orrescat |
| | 60 | 27 | | | contra..itur |
| | 70 | 19 | | | detra..i |
| | 82 | 25 | | | ..ospitium |
| | 86 | 33 | | ..actenus | ..actenus |
| | <i>always</i> | | ..adrianus | | |
| | 106 | 1 | *..ermogenianus | | *...orreorum |
| | 108 | 26 | | | *pit..onem |
| | 126 | 18 | *pit..onem | | |
| <i>l</i> | 98 | 8 | *inf..igit | | *inf..igit |
| <i>m</i> | 102 | 28 | com..endata | | |
| | 138 | 22 | *com..entario | | |
| <i>r</i> | 82 | 17 | *ag..este | | |
| | 90 | 12 | er..orem | | |
| | 120 | 22 | *euenire | *eueniri | *euenire |
| <i>s</i> | <i>passim</i> | | exusit exuserit | exusit exuserit | |
| | 72 | 23 | *eduxerit | | |
| | 86 | 7 | *con..titute | | |
| | 122 | 28 | *tran..lata | | |
| | 138 | 11 | ..uperioribus | | |
| | 64 | 23 | manumit..ere | | |
| | 80 | 17 | *liber..os | | |
| | 116 | 22 | remit..enda | | |
| <i>b for d</i> | 90 | 21 | *abstipulantibus | *abstipulantibus | *abstipulantibus |
| <i>b for p</i> | 118 | 16 | *babuli | | |
| | 60 | 19 | | obtulerit | |
| <i>b for u</i> | 60 | 17 | *beneficiis | *beneficis | *beneficiis |
| | 62 | 17 | | | ebaristi |
| | 70 | 2 | sebitia | | |
| | 70 | 13 | | | sebitia |
| | 78 | 22 | seruabit | | seruabit |
| | 88 | 16 | abia | | |
| | 88 | 23 | fabore | | |
| | 102 | 10 | | bytricus | |
| | 114 | 13 | *berbicem | *berbicem | *berbicem |
| | 128 | 27 | | | dibus |
| | 144 | 3 | abunculus | | |
| | 134 | 16 | adoptibi | | |

SPECIMENS OF ERRORS IN THE CODICES.

| Class. of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|------------------|-------------|-----------|---------------|--------------------------|------------|
| <i>c for e</i> | Page 128 | Line 5 | | *seductus (sed uetus) | *seductos |
| <i>c for g</i> | 78 | 28 | *ambicatur | *ambicatur | *ambicatur |
| | 82 | 17 | | | *acreste |
| | 126 | 7 | | placiatore | |
| <i>c for h</i> | 126 | 19 | *caruspex | | |
| <i>c for n</i> | 94 | 18 | *coctornique | | |
| <i>c for qu</i> | 106 | 14 | *cominus | *cominus | *cominus |
| | 116 | 14 | | *alico | |
| <i>c for t</i> | 100 | 7 | *cocta | *cocta | |
| <i>ci for ti</i> | 80 | 19 | inpacientia | | |
| | 84 | 12 | tercio | | |
| | 92 | 17 | leccio | | |
| | 96 | 7 | } accione | | |
| | 96 | 8 | | | |
| | 104 | 9 | } accionem | | |
| | 116 | 27 | | | |
| | 128 | 12 | noticiam | | |
| | 132 | 4 | contenciosos | | |
| | 138 | 11 | pocior | | |
| | 138 | 17 | pocius | | |
| <i>d for c</i> | 132 | 1 | *ad | | |
| <i>d for cl</i> | 62 | 15 | | *daudium | |
| <i>d for t</i> | passim | | adque | adque | adque |
| | 72 | 30 | | | capud |
| | 68 | 8 | } inquit | inquit | inquit |
| | 90 | 24 | | | |
| | 104 | 18 | ad | | |
| | 114 | 16 | adtamen | adtamen | |
| | 138 | 18 | quod quod | | |
| <i>d for u</i> | 130 | 18 | *deterioribus | | |
| <i>f for d</i> | 88 | 14 | | affinium | affinium |
| | 100 | 10 | | afficitur | |
| <i>f for r</i> | 88 | 32 | *infuere | | |

SPECIMENS OF ERRORS IN THE CODICES.

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|------------------------|---------------|------------|---|-----------------------------------|----------------------------|
| <i>f</i> for <i>s</i> | Page 130 | Line 22 | | | * <i>perfida</i> (Persica) |
| <i>g</i> for <i>c</i> | 60 | 5 | | * <i>adfigi</i> | * <i>adfigi</i> |
| | 88 | 8 | * <i>negante</i> (<i>necante</i>) | | |
| <i>h</i> for <i>d</i> | 128 | 10 | | * <i>huiusmohi</i> | |
| | 102 | 25 | | <i>homo</i> | |
| <i>i</i> for <i>g</i> | 124 | 26 | | * <i>ingungitur</i> | |
| <i>m</i> for <i>n</i> | 72 | 10 | | <i>compellere</i> | |
| <i>n</i> for <i>r</i> | 106 | 9 | | <i>natione</i> | |
| <i>n</i> for <i>rt</i> | 98 | 21 | * <i>deponantur</i> (<i>deportantur</i>) | * <i>deponantur</i> | * <i>deponantur</i> |
| <i>n</i> for <i>s</i> | 88 | 20 | | * <i>nantum</i> | * <i>nantum</i> |
| <i>n</i> for <i>ss</i> | 66 | 7 | | * <i>cenat</i> | * <i>cenat</i> |
| <i>n</i> for <i>u</i> | 128 | 6 | | <i>canetur</i> | <i>canetur</i> |
| <i>n</i> for <i>m</i> | 72 | 7 | * <i>inparente</i> (<i>inparem te</i>) | | |
| <i>p</i> for <i>b</i> | 136 | 29 | * <i>consoprinos</i> | | |
| <i>p</i> for <i>c</i> | 108 | 9 | * <i>direptam</i> | * <i>direptam</i> | <i>direptam</i> |
| <i>p</i> for <i>d</i> | 94 | 10 | | <i>appaehendere</i> | <i>appaehendere</i> |
| <i>p</i> for <i>u</i> | 114 | 3 | * <i>interpalam</i> (<i>interuallum</i>) | * <i>interpella</i> | * <i>interpella</i> |
| <i>ph</i> for <i>f</i> | <i>always</i> | | | <i>nephas</i> <i>nepharius</i> | |
| <i>qu</i> for <i>c</i> | 62 | 20 | <i>quohercendum</i> | | |
| | 64 | 23 | | | <i>quogendus</i> |
| | 72 | 28 | <i>quohercendis</i> | | |
| | 86 | 10 | | | <i>quohibenda</i> |

SPECIMENS OF ERRORS IN THE CODICES.

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|---------------------------------|---------------|------|--|--------------------------------------|-----------------------|
| | Page | Line | | | |
| <i>qu</i> for <i>c</i> (contd.) | 86 | 11 | | * <i>que</i> ortatur (cohortatur) | |
| | 88 | 11 | | * <i>quo</i> nobis (conubiis) | * <i>quo</i> nobis |
| | 104 | 3 | | <i>quo</i> modati | |
| | 122 | 19 | * <i>quo</i> herceri | | |
| <i>qu</i> for <i>f</i> | 66 | 21 | | * <i>quid</i> (fit) | |
| <i>r</i> for <i>s</i> | 68 | 4, 5 | * <i>re</i> xtertiorum (sestertiorum) | | |
| | 76 | 19 | | * <i>re</i> stersiorum | |
| | 82 | 18 | | * <i>re</i> gulis (saeculis) | |
| <i>r</i> for <i>st</i> | 86 | 20 | | * <i>honerate</i> | |
| | | | | | |
| <i>r</i> for <i>s</i> | 88 | 29 | | * <i>re</i> ueritatem | * <i>re</i> ueritatem |
| | 104 | 25 | | * <i>re</i> mper | * <i>re</i> mper |
| | 118 | 17 | | * <i>artiliae</i> | |
| <i>s</i> for <i>g</i> | 112 | 8 | | abiseis | |
| <i>s</i> for <i>n</i> | 122 | 27 | * <i>summaria</i> | * <i>summaria</i> | * <i>summaria</i> |
| <i>s</i> for <i>r</i> | 104 | 7 | | * <i>uestitur</i> | * <i>uestitur</i> |
| <i>ss</i> for <i>r</i> | 88 | 4 | | * <i>obediss</i> (a)e | * <i>obediss</i> (a)e |
| <i>s</i> for <i>t</i> | 126 | 22 | * <i>sua</i> | | * <i>sua</i> |
| <i>t</i> for <i>d</i> | <i>always</i> | | <i>aput</i> | | |
| | 106 | 23 | quatratille | | |
| | 112 | 6 | | } <i>aliut</i> | |
| | 138 | 1 | | | |
| <i>t</i> for <i>i</i> | 64 | 8 | inturia | | |
| <i>t</i> for <i>l</i> | 78 | 31 | exitium | | |
| <i>ti</i> for <i>ci</i> | passim | | prouintia | | |
| | 58 | 9 | conditionis | conditionis | conditionis |
| | 62 | 7 | suspitione | | |
| | 66 | 22 | conuitium | | |
| | 80 | 6 | translatitiae | | |
| | 104 | 3 | iuditio | | |
| | 114 | 27 | inimititiarum | | |
| | 114 | 32 | sartiatur | | |
| | 130 | 16 | pertinatia | | |
| <i>ti</i> for <i>cti</i> | 76 | 1 | | iurisditio | |

SPECIMENS OF ERRORS IN THE CODICES.

| Class of Error. | Reference. | | Berlin. | Vienna. | Vercelli. |
|-----------------------|------------|------|-----------------------------------|----------------------|------------------------|
| <i>u</i> for <i>a</i> | Page | Line | | | |
| | 126 | 24 | * <i>u</i> guria | | |
| <i>u</i> for <i>b</i> | 60 | 20 | | <i>prou</i> auerit | |
| | 62 | 6 | <i>preu</i> ita | | <i>preu</i> itis |
| | 72 | 4 | <i>preu</i> itis | | |
| | 76 | 16 | <i>conu</i> uio | | |
| | 82 | 24 | | * <i>expia</i> uit | * <i>expia</i> uit |
| | 86 | 5 | <i>nou</i> ilissimorum | | <i>nou</i> ilissimorum |
| | 104 | 17 | } <i>ciu</i> uarium | | * <i>ciu</i> uarium |
| | 104 | 18 | | | |
| | 104 | 18 | | | <i>inproue</i> |
| | 118 | 15 | <i>conprou</i> ata | | |
| | 120 | 13 | | <i>sau</i> inum | |
| | 130 | 12 | <i>prou</i> arentur | | |
| <i>u</i> for <i>r</i> | 140 | 4 | * <i>inu</i> ita | * <i>inu</i> ita | * <i>inu</i> ita |
| <i>x</i> for <i>c</i> | 58 | 27 | * <i>ex</i> quo | * <i>ex</i> quo | * <i>ex</i> quo |
| <i>x</i> for <i>s</i> | 64 | 17 | <i>extima</i> tur | | <i>extima</i> tur |
| | 76 | 19 | * <i>sex</i> tertiorum | | * <i>sex</i> tertiorum |
| | 80 | 5 | * <i>lex</i> et (<i>laesae</i>) | | |
| | 88 | 30 | <i>exti</i> met | | |
| <i>y</i> for <i>i</i> | 138 | 16 | <i>styr</i> pēs | | |
| | 104 | 17 | | * <i>cy</i> bariarum | |
| | 102 | 10 | | <i>by</i> tricus | |

TEXTUAL VARIANTS.

ABBREVIATIONS.

a, *b*. Where added to Readings, *a* refers to the scribe's earlier, *b*, to his later reading.

1, 2. Where added, 1 refers to the scribe's reading, 2, to the correction by a later hand.

| | | | |
|-------------|--------------------------------------|-------------|---------------------|
| Bas | = Basilica. * | Hus. | = Huschke. |
| Beauv. Cod. | = Beauvais Codex (Bellovacensis). | Just. C. | = Justinian's Code. |
| Char. | = Charondas. | Lach. | = Lachmann. |
| Digest. V. | = Digestum Versio Vulgata. | Mom. | = Mommsen. |
| Flor. | = Codex Florentinus. | Paul. | = Pauli Sententiae. |
| Hal. | = lectio Haloandrina. † | Putean. | = Puteanus. |
| | | Schult. | = Schulting. |
| | | Theod. Cod. | = Theodosian Code. |

* The Basilica, a Greek version of the Justinian Collections, with omission of redundances and additions, compiled by Basil and his son, Leo the Philosopher, at the end of the 9th and beginning of the 10th centuries.

† *Lectio Norica* or *Haloandrina* is a mixed text due to Gregorius Haloander (Metzler), the result of a collation of the Florentine with some of the oldest Vulgate MSS., aided largely by arbitrary conjecture, which was published by him at Nuremburg in 1529.

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--------------------------------------|--------------------------|-----------------------------------|---|
| PAGE 56. | | | | |
| 3. Liber primus | <i>omitted</i> | | <i>omitted</i> | |
| 7. Moyses haec | hac | idem moyses | hac | |
| 8. hominem mortem | | | homine morte | |
| 9. si manu lapide quo | sin lapidem | manum lapidem quod | lapidem | |
| 10. mortem | | | morte | |
| 12. iram manu | manum | manum | ira | |
| 13. mortem | | | morte | |
| 14. Paulus titulo | | <i>omitted</i> | | |
| 15. ueneficis | beneficis | beneficis | beneficiis | |
| 17. eiusque causa ue cum et qui | causam | dum | causam uel dum | eius uel (<i>Paul. MSS.</i>) quiue (<i>Huschke</i>) |
| 18. causa uendiderit | | et uendiderit | causas | |
| 19. falsumue quo quis periret, mortisue causam | falsumuae perisset mortis suae | quos qui mortisue | (a) falsum uel mortis suae | falsum (<i>Paul. MSS.</i>) causas (<i>Paul. MSS.</i>) ob quae (<i>Paul. MSS.</i>) |
| 20. quae poena | | poenam | paenam | |
| 21. aut in | | | | aut (<i>Paul. MSS.</i>) |
| 22. subiciuntur | | | | obiciuntur (<i>Paul. MSS.</i>) |
| 23. Ulpianus libro VII proconsulis | proconsuli (<i>index</i>) | | } ulpiani (<i>mar- gin</i>) | |
| 24. ueneficis | | beneficis | beneficiis | |
| 25. primo is | primum his | primae his qui | his qui | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli, | Other Readings. |
|--|--|--|---|--------------------------------|
| PAGE 56— <i>cont.</i> | | | | |
| 26. iudexue quaestionis cui sorte | iudexuae cui sortem | iudex uel questiones <i>omitted</i> romae | iudex uel cui sorte | propiusue (<i>Schulting</i>) |
| 27. Roma propiusue passus factum | propriis factus | proprius passuum | proprius factūs (<i>sic</i>) | |
| PAGE 58. | | | | |
| 1. uti quaerat qui ei lege sorte obuenerint | utique erat cui legem sortem | ea sortem obuenerit | obuenerit homines negandi | |
| 2. hominis ne- candi | | | | |
| 3. causa hominemue cuiusue dolo | hominemuae cuius dolum | hominem uel | causam hominem uel | |
| 4. erit | fuert | | | |
| 5. Relatis uerbis legis | Relatis uerbis legi (<i>text</i>) legis (<i>index</i>) | | } <i>omitted</i> | |
| modo ipse loquitur | modo ipsi loquitur | | } <i>omitted</i> | |
| 5-6. Ulpianus...omnem | | Ulpianus <i>omit- ted</i> | (b) Ulpianus ... omnem(<i>all be- tween omit- ted</i> ; (a) <i>pro- bably omits all</i> | |
| 6. qui cum | | | quicūq̄ cū (<i>ac- cording to Blume</i>) | |
| 7. necandi causa | causam | causam | negandi causam | |
| 8. coercet | coerci | coherci | (a) coerci *** in hac (rest om.) | |
| conpescit item eum qui hominem occidit nec | conpesci i. e. q. h. occi- dit coercit nec | compescit i. e. q. h. occi- dit coherciti in haec | (b) coercere ei in hac | |
| 9. adiecit ut et | aiecit | | | adicit (<i>Hus.</i>) |
| 10. pertinere | pertinet ire | pertinere | ut pertineret | |
| 11. item libro qui supra titulo | quod supra tituii (<i>index</i>) mortis suae | liber quod supra titulus | idem quod supra | |
| 12. mortisue | | | (a) mortis suae | |
| 13. causam | | | causa | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin, | Vienna. | Vercelli, | Other Readings. |
|---|--|----------------------------------|---|---|
| PAGE 58— <i>cont.</i> | | | | |
| 14. decasualibus | item (idem, <i>index</i>) de casualibus | item de casualibus | item de casualibus | |
| homicidis | | homicidiis | | |
| 16. subito inimicitias | <i>omitted</i> | inimicitiiis | | |
| 17. insidians | insidiant | insidiauereit | insidiaris | |
| 18. et mortuus | mortuus | | | |
| 18-19. non inimicus eius fuerit | { inimicus eius | | | |
| 19. indicabitis | | | iudicabitis et | |
| 20. et proximum | | et proximum et | | |
| 21. et | | <i>omitted</i> | <i>omitted</i> | |
| 22. relati | relato | | | |
| 24. et qui | et qui (<i>index</i>), set qui (<i>text</i>), according to Scaliger; now obliterated | et qui | et qui | |
| 25. occidit sed occidendi | cađ (<i>index</i>) | occidenti | occidenti | scilicet (<i>Pith.</i> , <i>Hus.</i>) |
| 26. admisit homicida | | amisit homicidam | amisit | |
| 27. e re ex quo | et re ex quo | et re ex quo | trem ex quo | ex quo (<i>Mom.</i>) |
| 28. epafroditus gladium | ipsa funditus | ipsa fronditus | ipsafroditus gladius | epafroditus (<i>Blume</i>) |
| PAGE 60. | | | | |
| 1. quin occidendi si clauē | qui non sic lapidem | qui non occidend. (<i>sic</i>) | qui non si lapis | si clauē (<i>Digest</i>) |
| 2. percussit aut cucuma aut cum forte rixaretur ferro percussit | | { <i>omitted</i> | p. aut (cuc. <i>omitted</i>) aut cum f. rix. ferro percusserit | second aut (<i>omitted in Digest, Hus.</i>) |
| 3. occidendi mente et | . | | | |
| 4. homicidam summo | cum | homicida eo | homicida eum | summo (<i>Mom.</i>) |
| 5. affici | affici | adfigi | adfigi | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|------------------------------------|--|
| PAGE 60— <i>cont.</i> | | | | |
| 6. libro et titulo qui | libro tertio quinto quod | liber tertius u. [= quintus] titulus quo | libro tertio quinto quod | libro et (<i>Mom.</i>) |
| 7-15. qui..... ...relegantur occidit | | | | <i>To be found in Valli- celli Codex of Canons occiderit (Paul. MSS.)</i> |
| 8. homicida non | homicidam | (a) homida | <i>omitted</i> | |
| 9. si uellet casu | <i>omitted</i> uelle | | | qui (<i>Paul. MSS.</i>) id casu (<i>Paul. MSS.</i>) |
| 10. ut punitur is | puniatur his | et puniatur his | puniatur his | punitur (<i>Paul.</i>), punia- tur, the <i>Valli. Codex</i> his, the <i>Valli. Codex</i> |
| 11. [iactu] teli ferierit | teli | teli | teli | iactu teli (<i>Paul.</i>), telo (<i>Valli. Codex</i>) occidit (<i>Paul. MSS.</i>) |
| 12. percussus homo perierit | fuerit | homo percussus fuerit | ferierit | perierit (<i>Paul.</i>), fuerit (<i>Valli.</i>) |
| ictus quoque ipsos | iocus quoque ipso | botos ipsos quoque | uotus quoque ipsos | iocus (<i>Valli.</i>), ictus (<i>Digest</i>) quoque ipsos (<i>Valli.</i>) |
| 13. unumquem- que ludum | | | unumqueque lutum | |
| 14. damnantur dimidia parte | damnentur demediam parte | dampnatur dimidiam par- tem | | |
| 16. libro IIII [sub titulo] legem | libros (<i>index</i>) IIII | liber IIII | IIII | xiiii (<i>Pith., Hus.</i>) sub titulo (<i>added by Mom.</i>) |
| 17. sicariis ueneficis | siccari [is] ([is] <i>now obliterated</i>) beneficiis | beneficis | beneficiis | |
| 18. Aurelio Herculano | herculario | herculario | herculario | (<i>omitted in Just. C.</i>) herculano (<i>Just. C.</i>) (<i>Basil</i>) |
| 19 si se praesidi | si ne presidi | siue presidis | si rem | si se (<i>Just. C.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|---|--|---|
| PAGE 60— <i>cont.</i> | | | | |
| 20. cui animo iustam | iustam | animi iusta | iusta | qui (<i>Just. C.</i>) } ἰοῦστον (<i>Just. C.</i>) (<i>Bas.</i>) hominem (<i>Just. C. MSS.</i>) |
| a se percutsam | a re | a re | a re percutsa | a se (<i>Just. C.</i>) purcussum (<i>Just. C.</i>) |
| 21. esse, remissa poena disciplinam militarem | esse remissam | <i>omitted</i> poenam militare | penam disciplina | |
| 22. proferet proposita prid. kl. febr. laeto bis cons. | proferret propositio prid. Kl Febr. letio uis cons | profert propositam } <i>omitted</i> | proferre proposita <i>omitted</i> | proferet (<i>Just. C.</i>), feret (<i>Hus.</i>) II. k. febr. laeto II. et cerealī (<i>Just. C.</i>) (<i>Hal.</i>) |
| 23. titulo et libro | et titulo et libro (<i>index</i>) | titulo (et libro <i>omitted</i>) | libro et titulo | |
| 25. A Flauio | <i>omitted</i> fauiο | <i>omitted</i> | | |
| 26. quo dolo | quod | <i>omitted</i> dolum | quo | |
| 27. quippe ita si et | et si | (a.) qu(*)ppe si et ita | si et | enim (<i>Just. C.</i>) |
| 28-29. ex improuiso casu potius quam fraude acci- dunt fato | <i>omitted</i> | ex improbis occasum p. q. fraudem a. foto | <i>omitted</i> improuiso c. p. q. f. accedunt facto | |
| 30. prop. . . . cons | | } <i>omitted</i> | <i>omitted</i> | |
| PAGE 62. | | | | |
| 1. tale | | talem | | |
| 2-3. exemplum... n(obi)s | quod si dnm habe agatu kn | quod si dnn habe gatu kn | quod si dnn habe agatu kn | *exemplum sacrarum lit- terarum. Diocletiani et Maximiani A.A. Aga- tho (<i>Cas.</i> , while others have agathocli or agathodi. <i>Just. C.</i>) |

* Mommsen says that his text is uncertain; but as the prescription in Justinian's Code was undoubtedly taken from the Gregorian Code, which was compiled under Diocletian, it is probably correct. The names of the Emperors were not given in the text; at least they could not have been written before dd.nn. E(xemplum) s(acrarum) l(itterarum), the first letters of these words may have been taken for quodsi.

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|---|---|
| PAGE 62— <i>cont.</i> | | | | |
| 3. precum | | | pre eum | |
| 4. facile homicidium se | humicidium | facilem | facilem humicidium sed | |
| 5. uoluntate sed casu fortuito fecisse calcis ictu | | uoluntatem | | |
| | fecisset calicis ictum | fortuito fecisset calicis ictum | casum fecisset ictum | |
| 6. occasio praebita | preuitat | occusu praebuita | | |
| 7. omni eum ac suspicionem quod ex admissae rei | omnium hac | omnium at suspicionem <i>omitted</i> admisserit ei | omium | eum omni (<i>Just. C.</i>) quam (<i>Just. C.</i>) |
| 8. sustinet, adnotatione | | sustinere adnotatio | sustine adnotatio | |
| 9. Dat prid. k. Decemb. | | | } <i>This subscrip- tion is omit- ted</i> | <i>instead of prid:</i> III or VII (<i>Just. C.</i>) |
| 9-10. Diocletiano Aug. IIII et Maximiano conss. | Diocletiano Aug. IIII. <i>obliterated</i> | | | Sirmi ipsis A.A. IIII et III cons. (<i>Just. C.</i>) <i>Scaliger emends</i> Dio- cletiano Aug. III |
| 11. libro qui | quod | liber qui | libro <i>omitted</i> quod | quo (<i>Char.</i>) |
| 12. per lasciuam | <i>omitted</i> | lasciuam nim- iam | | |
| 13. taurini egnati | taurini egnati | taurini heriati | taurini ergati | taurini egnatii (<i>Char.</i>) ignatii taurini (<i>Di gest</i>) |
| Baeticae | ueticae | ueticae | uettice | |
| quinquennium | | quinquennio | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings- |
|---|--|--|--|---|
| PAGE 62— <i>cont.</i> | | | | |
| 14-15. uerba ... optime | | | } <i>omitted</i> | • |
| 15. consultationis | consultationis (<i>index</i>) consolationis (<i>text</i>) | consultationis | | consultationis (<i>Charondas</i>) |
| habent | habentem | habentem | | habent [uellem rescri- bas] (<i>Char.</i>) clodium (<i>Char.</i>) |
| Claudium | clodium | daudium | | |
| 16. imperator, et euaristum | imp. eu**ristum ¹ euaristum ² | imperator euaristum | <i>omitted</i> euaristus | |
| cognoui Claudius Lupi | cognouit gladius luppi | | luppi | clodius (<i>Char.</i>) |
| 17. iactatur culpa mari male | lactatur culpam manu mele | ietitur culpam a mario melle | iettitur culpa mari melea | iactatur (<i>Char.</i>) culpa manu marii (<i>Ch.</i>) |
| 18. moreretur | | commoretur ¹ commoraretur ² | | |
| 19. nullam inimi- citiā cum euaristo ei | nulla inimicitia } cum ebaristi | euaristi | abaristi | cum euaristo ei (<i>Mom.</i>) cum euaristo (<i>Char.</i> , <i>Blume</i>) |
| fuisse tamen | fuisset nec | fuisset nec | fuisse ne | fuisse tamen (<i>Mom.</i>), fuisse nec (<i>Char.</i>) culpam (<i>Char.</i>) |
| 20. culpa credidi aetatis | culpam crededit | culpa crededit | culpam | |
| 21. emendarentur ideoque Mario Euaristo urbe italia prouincia | | emendarentur ideoque Mario et euaristo urbe italia | e (<i>all the rest omitted</i>) e prouincia | |
| 22. Baetica quinquen- nium interdixi et decreui ut | ueticae iterdixit decreuit et | uetica quinquennio interdixit et decreuit et | uettica interdixit decreui et causam | interdixi (<i>Char.</i>) decreui (<i>Char.</i>) et (<i>Char.</i>) |
| 23. duo milia patri eius | | pari | | sestertium duo milia (<i>Hus.</i>) After eius Mommsen suggests that some such phrase as quem interfecit has dropped out |
| euaristus | ebaristus | | et baristus | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|---|---|
| PAGE 62— <i>cont.</i> | | | | |
| 23-24. eius fuerat | | fuerat eius | | |
| 24. u(erba) r(escripti) poenam Mari Euaristi | uel res Kp dcv uerba rescripti poenam mari ebaristi | uel res uerba rescripti poenae marii et euaristi | uel res uerba rescripti poena mari aebaristi | <i>See note, p. 6, l. 19</i> |
| 25. recte Taurine es refert | recte et taurinae est | est referat | est referent | recte egnati taurine. (<i>Char.</i>) |
| 26. admittatur an casu | hanc | amittatur hanc occasio | amittatur hanc occasio | |
| 27. distinctio haec poenam | | districtio haec poenam distinctio haec poena (<i>sic</i>) | | distinctio haec poenarum (<i>Char.</i>) |
| aut iustam | iustitiam | autem ante iustitiam | an iustitiam | iustam (<i>Digest and Blume</i>), iustitiam (<i>Char.</i>) |
| 28. prouocare aut tempera- mentum | | | autemperamen- tum | elicere (<i>Digest, before correction</i>), eligere (<i>Digest, after correction</i>) |
| 29. modestinus libro...titulo | | modestinus lib- rum titulo | modestinus ... (<i>titulo omitted</i>) | |
| 30. generaliter loquitur | | (a) loquitur aliter | | |
| 31. delinquen- tibus ciuilis | ciuili | delinquentium ciuiles | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|-------------------------|-----------------------------------|---|--|
| PAGE 62— <i>cont.</i> | | | | |
| 32. uenia facti | pacto | ueniam facto | facto | |
| 32-33. quae scilicet | qui scilicet | qui scilicet | quis licet | |
| 33. consilio praestari | | consilium praestare | | |
| PAGE 64. | | | | |
| 1. addita distinctione | distinctionem | additam distinctionem | | |
| 1-2. sciente an ignorante | sciente ad ignorante | | (a) scientiae an ignorantiae | |
| 2. aliquo | | | aliquod | |
| 3. libro et titulo | | liber et titulum | | |
| qui | quod | quod | quod | |
| 4. tutandae salutis causa gerit uideatur hominis | ageret uideatur | tutat de gerit uideatur | tuta de causam gerit uideatur homines | salutis suae (<i>Digest</i>) gerunt (<i>Digest</i>) uidentur (<i>Digest</i>) |
| 5. causa appellatione | appellationem | causam appellationem | appellationem | |
| 6. omne | omnem | omni | | |
| 8. iniuria | inturia | | | |
| 10. contenderint alter | | unus | contenderit | |
| 11. lapide decubuerit autem | | lapidem et decubuerit | | |
| 12. foris | fortis | fortis | fortis | <i>Pith. in accordance with the Greek ver- sion, foris baculo suo (Hus.)</i> |
| baculo accessationis | acessionis | accesionis | baculo suo (?) accessationes | |
| 14. ei curationis | aea | curationes | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|-------------------------------------|---|---|
| PAGE 64— <i>cont.</i> | | | | |
| 15. U. libro singulari regularum sub titulo iniuriis | U. libro regularis sub titulo (<i>text</i>) libro regulari sub titulo (<i>index</i>) iuriis (<i>index</i>) | U. lib singulorum de sub titulo | } <i>omitted</i> | |
| 16. iniuria grauis, non est iudicis | grauirerum non | iniurias grauis est non iudici | | iniuriam (<i>Hus.</i>) grauis non est (<i>Mom.</i>) |
| 18. idque colligi ex uerberatus uel quis | adque (a) collegi (b) colligi <i>omitted</i> | collegit et aut | colligit uerberatur | |
| 20-21. Papinianus libro definitionum secundo sub titulo de iudicatis | papianus l. def. definitiorum (<i>index</i>) sec. sub tit. | papianus l. def. secundo sub titulo | Pap. l. def. (secundo sub titulo <i>omitted</i>) de iudicatis personis hominum liberorum mox editum | |
| 22. hominem liberum noxae deditum | noxiae deditum | hominem liberorum mox ad editum | | |
| 23. quantum damni dedit | damnum | quantum dedito | | |
| 24. praetore noxae deditum iudicio | noxae taeditum | praetutore et noxae deditum | pretor et noxa aeditum iudici | |
| PAGE 66. | | | | |
| 1. ulpianus libro XVIII ad edictum sub titulo | | tituli | } <i>omitted</i> | XVIII in Digest (<i>correctly</i>) |
| 2. iniuria et cum diceret | iniuriam et cum diceret | iniuriam et cum dicere | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|---|--|
| PAGE 66— <i>cont.</i> | | | | |
| 3. qui | | qui autem | | |
| 4. uel loris pugnis caedit | uel loeris cedit | uel oriens pignus occidit | uel oriens occidit | cecidit (<i>Digest</i>); ceci- derit <i>required by the</i> <i>construction</i> |
| 4-5. uel telo quoue alio uis genere sciderit hominis | uel telo cum alio uis genere ce- deret hominis | uel telo cum alio uis genere oc- ciderit hominis | uel telocum alio bis genere oc- ciderit hominis | uel.....hominis (<i>Lach.</i>) uel telo uel quo alio, ut scinderet alicui (<i>Digest</i>) |
| 5. uel tumorem sed damnum | uel | uultumore uel si | uel | sed (<i>Digest</i>) d. iniuria (<i>Digest</i>) |
| 6. ceterum si in nullo uiliorem | et cetero | cetero sin | cetero (a) nulco uiliorum | si (<i>Digest</i>) |
| 6-7. deterioremeue | | | (a) deteriore me uel | |
| aquila | ad aquiliam | (b) ad aquilia (a) attaquilia (a) cenatorcenat (b) cenasorcenat | ad aquilia | |
| cessat | | rit | cenat | |
| erit | | | | |
| 8. pretio deterior factus seruus uerum | | uerunt | pretium deterio uero | seruus factus (<i>Digest</i>) |
| 9. salutem sanitatem nec uideri | salute sanitate uideri | alte sanite uideri | salte sanite uideri | nec omitted (<i>Digest</i>) uidetur (<i>Editors</i>) |
| 10. damni aquilia lege | | | | damnum datum atque ideoque lege aquilia (<i>Digest</i>) |
| [agi] | omitted | omitted | omitted | agi (<i>Digest</i>). |
| 11. libro singulari et titulo | liber (<i>text</i>) | singulorum tituli | | |
| 12. dicitur iniuria | iniuriam | dscitur (<i>sic</i>) | dicit | |
| 13. alia est | alia est | alia est | alia est | alias (<i>Inst.</i>); and so in next line alias (<i>Inst.</i>) |
| 13-15. ὁ βραχίων Graeci | omitted | omitted | omitted | supplied from a similar passage <i>Just. Inst.</i> iv. 4. pr. |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|----------------------------------|----------------------------------|--|---|
| PAGE 66— <i>cont.</i> | | | | |
| 15-16. ἀδικία uocant | adician uocant | adicent | adicent | |
| 16. praetor non iure aduersum | noster aduersum | praeter noster aduersus | noster (a) aduersus (b) aduersum | non iure (<i>Inst.</i>) |
| pronuntiat | pronuntiaret | praenuntiat | | |
| 17. non | nos | nos | nos | |
| 18. Labeo ὑβρις | hybrin | libet imbrim | labet ibrin | |
| 19. commune omnibus iniuriis | commune omnibus enim iuris | commune omnibus enim iuris | commune omnibus enim iuris | commune omnibus iniuriis (<i>Lach.</i>). He adds after mores in the next line aliquid. Mom. thinks this addition unneces- sary. |
| 20. fieri edictum | | fierit edictam | fieri | |
| 21. eam fit fit | | fit quid | ea | |
| 22. iniuria caedimur uerbis | iniuriam credimus | in uerbis | | |
| 23. uel dignitas ut matronae | uel patronae | dignitatem uel | (a) c uel uel | ut (<i>Digest</i>) |
| 24. praetextatae abducuntur aut | pr(a)etextote adducuntur | adducuntur ad | pr(a)etextote | praetextato (<i>Hus.</i>) |
| PAGE 68. | | | | |
| 1. honoraria legitima lege | legem | honerariam legitimam legem | | |
| 2. iniuriam et uiginti sestertiorum | ex restertiorum | ex uiginti resitrium | iniuria ex (b) sestertio- rum (a) sextertiorum | |
| 2-3. poenam sub- bito | poena subit | poenam subit | poena subit | poena sunt (Hus.), poenam subito (Mom.) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|---|---|--|
| PAGE 68— <i>cont.</i> | | | | |
| 3. generalis fuit | | | generali fuit | |
| 3-4. fuerunt et speciales uelut illa si os fregit | <i>omitted</i> | fuerint et speci- ales uelut manifestus fregit | fuerunt et speci- ales uelut manifestos fregit | fuerunt et speciales uelut si os fregit. (<i>Blume</i>); fuerunt et speciales uelut illa manu fustiae si os fregit (<i>Lachmann</i> , <i>Savigny Zeitschrift</i> <i>für gesch. Rechts-</i> <i>wiss.</i> 10. 311). <i>Momm-</i> <i>sen agrees with</i> <i>Blume</i> , and rejects <i>Lachmann's emen-</i> <i>dation on the ground</i> <i>that the XII. Tables</i> <i>would not descend to</i> <i>the detail manu</i> <i>fustiae.</i> |
| 4. ccc [si] C. L. | trecentos <i>omitted</i> | ccc <i>omitted</i> ad | trecentos <i>omitted</i> | 3. 223, at si (<i>inserted in</i> <i>Gaius</i>) |
| 4-5. subito sester- tiorum | subitor ex tertiorum | <i>omitted</i> | subitor ex tertiorum | |
| 6. singulari sub titulo | | singulorum sub titulo | <i>omitted</i> | |
| 7. iniuriarum | iniuriam | iniuria | iniuria | |
| 8. iniuriarum agit certum quid | iniuria aget qui | iniuriam c | iniuria qui | |
| 9. iniuriae taxationem non minorem quam | | iniuriam taxationum <i>omitted</i> | no minore (a) fierit | non maiorem (<i>Hus.</i>) |
| 10. fuerit | | | | |
| 11. demonstrat | | (a) demonstram | | |
| 11-13. neque..... accidisse c. s. u. n. h. a. u. no- mine suo rem designare | neque accidisset c. s. u. n. h. a. u. nominis suo re destinare | <i>se, the pas- sage omitted</i> | n..... accidisset c. s. u. n. h. a. u nomini suo rem destinare | designare (<i>Pith. on</i> <i>Dig.</i> 47, 10, 7 <i>pr.</i> 1) |
| 13. conplecti | conpleti | conpleti | conpleti | |
| 14. autem an | | aut | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|---|--|--|
| PAGE 68— <i>cont.</i> | | | | |
| 14. cognitio | | cogitio | | |
| 15. est demonstrat | demonstrata | demonstrata | <i>omitted</i> demonstrata | |
| 16. agentis | ageretis | ageritis | ageritis | |
| 17. se siue uer- beratum et demonstrat | <i>worn away</i> | si sit uerberatus ei | si (<i>a sibi</i>) sit uerberatus | se uel uerberatum (<i>Hus.</i>) demonstret (<i>Editors</i>) |
| 18. in modum puta lapide formula | puto lapidem | in modo puto lapidem | immodum puto formulam | |
| 19. proposita quod auli ageri mala pugno percussa est | posita qu. auli agerii pugno mola p. e. | proposita <i>omitted</i> | proposita qu. au. ag. pugno mola per. est. | quod a. a. pugno mala (<i>Pith.</i>); quod aulo agerio a numero negi- dio pugno mala per- cussa est. (<i>Hus.</i>); mala pugno (<i>Mom.</i>). |
| 20. cogitur dicere sinistra nec qua manu percussa sit | diceret sinistram nequa percussit | neque manus percussit | cogetur nequa percussit | percussa sit (<i>Hus.</i>) |
| 21. item adocere | ita addiceret | ita | ita | |
| 22. infamatus et formula Numerius | fermula numedius | <i>omitted</i> in numero | (<i>a</i>) infamatum <i>omitted</i> nomedius | |
| 23. Nigidius libellum mis- it | nigidius illum inmisit | nigidio illum inmisit | nigidius illum inmisit | libellum misit (<i>almost</i> <i>so Vonckius</i>); sillum inmisit (<i>Arnaud</i>); sibilum inmisit (<i>Hus.</i>); fimium inmisit (<i>Lenel</i> <i>Palingenesis</i> 1, p. 1113.) |
| 24. paulus libro sententiarum [quinto] sub titulo ad | paulus (paulo <i>index</i>) l. s. [quinto <i>omit-</i> <i>ted</i>] | paulus liber sent. (quinto <i>omit-</i> <i>ted</i>) | <i>omitted</i> | |
| 24-25. legem cor- neliam | | | | |
| 25. ueneficis | beneficis | beneficis | ueneficiis | |
| 26. non caesus | | | no | laesus (<i>Pith.</i>) |
| 27. aliquot diurnae decessit | aliquos diuuternae | cessit | aliquos | |
| 28. necem | | uicem | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|-------------------------------------|------------------|---------------|--|---|
| PAGE 70. | | | | |
| 2. Dominorum | | | | <i>Hus. adds</i> (cohibenda) |
| 4. aut | | et | | |
| uirga | | uirgam | (a) uirgo (?) | |
| 6. die | | de die | | |
| 7. paulus libro | (quinto omitted) | liber (quinto | } <i>the whole sen- tence omitted</i> | |
| sententiarum | | omitted) | | |
| [quinto] s. t. | | | | |
| 7-8 a.l. corneliam | | | | |
| ueneficis | beneficis | beneficis | beneficiis | |
| 10. postulari | | postulare | | |
| enim | | omitted | | <i>In order to keep the reading enim, Momm. properly suggests ad- dition after temperari of the phrase sed ta- men etsi eum dominus excessit, homicidium non commisit</i> |
| et | | omitted | | |
| 11. coercionem | quohercitionem | cohercitionem | cohercitionem | |
| 12. ulpianus li- bro titulo | | | } <i>omitted</i> | |
| 13. saeuitia | seuitias | | | |
| 14. seruorum | | | | seruos (<i>Digest</i>) |
| impudicitiam | pudiciciam | | | |
| 14-15. turpemque | | | (a) turpequi, ac- cording to Krüger; (a) tur- pequu; accord- ing to Huel- sen; (b) turpe- quae | |
| 15. uiolationem | | uiolentum | | |
| conpellat | | conpellant | conpellant | |
| sint | | sunt | | |
| praesidis | | principis | | |
| 16. diui | | omitted | | |
| ad | | omitted | omitted | |
| Aurelium | | aurelii | | aelium (<i>Digest</i>) |
| proconsulem | proconsole | | | |
| Baeticae | beticae | uettice | bettice | ueticæ (<i>Digest</i>) manifestabitur (<i>Digest</i>) |
| 16-17. manifest- tatur | | | | |
| 18. suos seruos | seruos suos | | suo seruos [ser- uo according to Krüger]; (b) suos seruos | |
| inlibatam | | | inliuata | |
| nec | ne | | | |
| 19. ne | | nec | | |
| 20. saeuitiam | | seuitia | | |
| iniuriam | | | iniuria | |
| denegetur | | denegentur | | |
| 21. qui | qui si | | | |
| eorum | illorum | eorum | illorum | eorum (<i>Digest</i>) |
| 22. sabini | | fauini | sauini | |
| confugerunt | | confugerant | | |
| si uel | siue | siue | siue | si uel (<i>Digest</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|-----------------------|------------------------|-----------------------|--------------------------------|---|
| PAGE 70— <i>cont.</i> | | | | |
| 23. habitos] | habiti | abuti | abiti | habitos (<i>Digest</i>) |
| est | <i>omitted</i> | <i>omitted</i> | | |
| infami | infamiae | infamem | | infami (<i>Digest</i> , V.) |
| iniuria | iniuriam | iniuriam | | |
| 24. uenire | ueniri | | | ueniri (<i>Digest</i>) |
| iube ita | iubet | iube intra | | iube ita (<i>Digest</i>); iubeta <i>Flor.</i> and (V.) |
| potestatem | | potestate | potestate | potestate (<i>Digest</i>) |
| Sabini | sauini | | sauini | |
| quod | | | | qui (<i>Digest</i>) (<i>correctly</i>) |
| 25. meae | | | me | |
| admissum | | | admissum hoc | hoc admissum (<i>Digest</i> , <i>Vulg.</i>) |
| 26. diuus | diuis (<i>index</i>) | | diuinus | |
| umbram | | | | umbriciam (<i>Digest</i>) |
| matronam | matrona nam | | matrona | |
| PAGE 72. | | | | |
| 1. in | | <i>omitted</i> | | |
| 2. tractaret | tractare | tractauit | tractaret | tractasset (<i>Digest</i>) |
| item | item (<i>text</i>) | idem item | idem | |
| | idem (<i>index</i>) | | | |
| 2-3. diuus p. ad | d. p. a. l. a. i. r. | d. p. a. l. a. i. | } <i>all omitted</i> | |
| l. a. i. rescrip- | (in <i>omitted</i>) | scripsit | | |
| psit in haec | h. u. | (in <i>omitted</i>) | | |
| uerba | | h. u. | | |
| 3-4. imperio sed et | | imperium reddet | | |
| moderatione | | moderationem | | |
| 5. debes | debet | | debet | |
| 6. temperate | temperare | | | |
| tuos | et uos | tuos | et uos | |
| ex facili | et facili | et facile | et facili | ex facili (<i>Lachmann</i>), reprimere (<i>Lachmann</i>) |
| requirere | | | | |
| eos | eo | <i>omitted</i> | eos | |
| possis | possit | possis | possit | |
| ne si | nisi | nisi | nisi | ne si (<i>Pithou</i>) |
| 7. inparem te | in parente | in parentem | (a) in parte (b) in parente | inparem te (<i>Pithou</i>) |
| inpendiis | | inpendus ¹ | inpendis | |
| 7-8. atrociore do- | atrociorem do- | atrociorem do- | atrociorem do- | atrociore dominationem |
| minationem | minationem | minationem | minatione se- | saeuitia (<i>Lachmann</i>) |
| 8. saeuitia | seuitiam | seuitiam | uitiam | |
| habeat | | habeas | | |
| proconsul | | | | |
| u. c. | | | } <i>omitted</i> | |
| 9. contra | | accedat | accedat | contra te (<i>Lachmann</i>) |
| accidat | se et | | | sed et (<i>Lachman</i>) |
| et | | auctoritatem | | after auctoritate, <i>Lach-</i> <i>mann adds te</i> |
| auctoritate | | | | |
| 10. Glabrione et | grauione et | grauione et | grauione et | |
| Homullo | romulo | romulo | romolo | |
| cons. | | cons. x. | <i>omitted</i> | |
| 11. libro | libro | liber | } <i>omitted</i> | |
| xviii | xviii | xviii | | |
| sub titulo | sub titulo | sub titulo | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|--|---|---------------------------------------|
| PAGE 72— <i>cont.</i> | | | | |
| 12. <i>impp.</i> Diocletianus et Maximianus Augusti Aurelio Sacrato | <i>impp.</i> dioclicianus e. Max. <i>august</i> au. sac. | <i>impr. pp</i> dioclicianus e. m. (<i>augg. omitted</i>) au. sacрати | <i>omitted</i> | |
| 13. <i>militi</i> [ui] | <i>mil.</i> <i>omitted</i> | <i>mil.</i> sacрати | <i>omitted</i> | |
| 14. <i>fati munus</i> <i>impletse</i> | | (<i>a</i>) <i>grauemur</i> (<i>b</i>) <i>fauemur</i> | <i>inplisse</i> | |
| 14-15 <i>castiga-</i> <i>tionem</i> | | | <i>casticationem</i> | |
| 15. <i>accusationem</i> <i>innocentiae</i> | <i>causationem</i> <i>innotitiae</i> | | (<i>a</i>) <i>innocitiae</i> (<i>b</i>) <i>innotitiae</i> | |
| 16-17 <i>prop. n. D.</i> <i>D. A. III e. A.</i> <i>cons.</i> | <i>prop. prop. n. D.</i> <i>Dioclitianus A.</i> <i>III et Aristone</i> <i>conss. IIII</i> | <i>omitted</i> | <i>omitted</i> | |
| 20. <i>dixit</i> | | <i>dicit</i> | | |
| 21. <i>moechatus</i> <i>fuerit</i> <i>mulierem</i> <i>mortem</i> | <i>fieri (Index)</i> <i>cum mulierem</i> (<i>Text</i>); <i>mul-</i> <i>iere (Index)</i> | <i>cum mulierem</i> | (<i>a.</i>) <i>maeschatus</i> <i>mulierem</i> <i>morte</i> | |
| 22. <i>qui</i> <i>fuerit</i> <i>quae</i> <i>moechata</i> | <i>qui</i> <i>moechatus</i> | <i>que</i> <i>omitted</i> <i>qui</i> (<i>a</i>) <i>moechatus</i> | <i>qui</i> | |
| 23. <i>aliqui</i> <i>seduxerit</i> <i>desponsatam</i> <i>stuprauerit</i> | <i>aliquis</i> <i>aeduxerit</i> | <i>aliquis duxerit</i> | <i>aliquis et dux-</i> <i>erit</i> <i>sponsatam</i> (<i>a</i>) <i>struprauerit</i> | |
| 24. <i>dotabit</i> <i>eam</i> | <i>docuit</i> | <i>dotabit</i> | <i>dauit</i> <i>omitted</i> | |
| 25. <i>dare illi</i> <i>inferet</i> <i>in</i> | | <i>illi dare</i> | <i>inferret</i> | <i>in omitted by previous Editors</i> |
| 27. <i>Paulus</i> <i>libro</i> <i>singulari</i> <i>de adulteris</i> <i>sub titulo</i> | <i>Paulus</i> <i>libro</i> <i>singularis</i> <i>de adulteris (text)</i> <i>ulteris (Index)</i> <i>sub titulo</i> | <i>Paulus</i> <i>liber</i> <i>singularem</i> <i>de adulteris</i> <i>sub titulo</i> | <i>omitted</i> <i>sub titulo de</i> <i>adulteriis</i> | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|--|--|
| PAGE 72— <i>cont.</i> | | | | |
| 28. interpretatio- nem [legis Iuliae] | interpretationem | | | legis iuliae <i>added by Huschke</i> |
| adulteris | | adulterio | adulteriis | |
| 28-29. coercendis | quohercendis | | | |
| 29. per | | in | | |
| ipsa | ipsam | | ipsam | |
| capita | capitam | rem | in re | |
| ire | | mali | | |
| malui | maluit | | | |
| 30. (Iuliae de adulteris) | | | iulii | iuliae de adulteris, <i>Momm. suggests its deletion.</i> |
| PAGE 74. | | | | |
| 1. obrogat patri | abrogat pater | abrogat | abrogat | obrogat (<i>Scaliger</i>) |
| 2. [si in] filia sua quam | <i>omitted</i> filias suas quas | <i>omitted</i> familias <i>omit- ting</i> sua quam | <i>omitted</i> filias suas quas | |
| potestate aut ea quae [eo] | potestatem ut <i>omitted</i> | potestatem <i>omitted</i> eam queque <i>omitted</i> | potestatem <i>omitted</i> <i>omitted</i> | aut (<i>Pithou</i>) |
| 3. auctore uiro in manum conuenerit | uero in mano conuenerit | cum in manum uenerit | auctorem in mano con- uenerit | |
| 3-4. adulterum | | | adultero | |
| 4. domi deprehen- derit | domui deprehenderet | domus depraehendens | domo deprehendant | |
| issue in | in quem | in quem | in quem | issue in (<i>Momm.</i>), isque in (<i>Schulting</i>) |
| eam | | ea | ea | |
| 5. socerum ut is eum | ut his cum | socer ad hos cum | ad his cum | eum (<i>Pith.</i>) |
| 6. filiam in continen- tenti occidat. in sui iuris autem | filiam in continen- tenti occidat inuidia autem | filia in continen- tem occidat inuidia autem | } <i>omitted</i> | filiam in continenti occidat in sui iuris autem (<i>Momm.</i>) |
| qui | | si | | |
| 8. marcellus | marcellum (<i>index</i>) | | | |
| libro | libro xxxi. d. | liber..... | libro | |
| xxx. digest- orum scribit | scribe (<i>index</i>) | scribit | xxx. indegesto- rum scribet autem de | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|--|--|--|
| PAGE 74— <i>cont.</i> | | | | |
| 9. auctoritate [legis] | | auctoritatem | | • legis added by Cujas, cp. line 14, where there is also the phrase legis auctori- tate |
| patrem posse interficere consularem | pater interficeret cons. | pater possit (b) consultum const. | pater — consst. | |
| 10. uirum uel patronum [sieurum] filia adulterum | uerum <i>omitted</i> filiam adulterium | utrum et patronem <i>omitted</i> filiam adulterium | uirum <i>omitted</i> adulterium | si eum (<i>Huschke</i>) |
| 12-13. sed solum ad. h. r. e. et si interuallo filiam interfecerit | interuallum filiam interficerit | } <i>omitted</i> | | |
| 13. tantundem est, nisi perse- cutus illam in- terfecerit : | tantunde est nisi persequa- tur illam in- terfecerit | tandem est nisi persequatur illam et in- terfecerit | interficerit } <i>omitted</i> | tantundem est nisi per- secutus illam int. (<i>Hus.</i>) |
| 14. continuatione auctoritate fecisse | continuationem auctoritatis fecisset | continuationem auctis | continuationem auctis | |
| 15. idem titulo | | | } <i>omitted</i> | |
| 16. uiro | uero | uero | | |
| 17. deprehensa uxore | deprehensam uxorem | deprehensam uxorem | deprehensam uxorem | |
| 18. ergo leges | | ego | ego | <i>Momm. would have preferred legem</i> |
| uiro domi | uero etiam domi | uirum etiam domui | etiam domi eo | domi (<i>Hus.</i>) |
| 19. eum | | | | |
| 20. auctoramento rogatus | | auctoramentum rogatum | actoramento | |
| 21. ut bestiis pugnaret | | sunt bestias pugnare | besteis | |
| 22. licet interficere deprehensum | licere | licere | licere <i>omitted</i> deprehenso | |
| et tam | | etiam | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|-----------------------|--|----------------------------|--|
| PAGE 74— <i>cont.</i> | | | | |
| 23. ciuem Romanum | | (a) romano | ciue litinum | <i>Momm. follows Hus. in pointing out that sed et patris..... occidere should come after paternum; and then et tam ciuem Romanum quam Latinum would be followed immediately by the explanation quo loco et dediticius habetur.</i> |
| 24. Latinum sed et patris et matris | | | (a) et matris et matris | |
| et filii | | filiis | filiis | <i>The clauses sed et patris...occidere and quo loco habetur... are apparently taken from a note on Paul.</i> |
| 25. dediticius habetur | deditius haberetur | dempticius | | |
| PAGE 76. | | | | |
| 1. iurisdictio occidit et | (a) ex | iuris ditionis occidi | | interfecit (<i>Scaliger</i>) <i>Mommsen prefers diuos</i> |
| 2. dimittere quod interficit | dimitteret | qua | | |
| 3. diuum | | quod | dum | |
| Commodum rescripsisse | rescripsisset | quomodum | quomodum rescripsisset | |
| 4. eum qui adulterum poena | p(o)enam* | cum in adulterium | eu | * <i>The Berlin Codex clearly has poenam.</i> |
| puniri | | puniret | punire | |
| 5. pepercit si qui inconsulto | eas | si ¹ ei si ² quid (a) inconculiscalo (b) in conculis calculo | perpecit ei | |
| calore | | occulto loco | | |
| 6. ducti | | reducti | | |
| interfecerunt | | interficerent | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|---|---------------------------------------|---|
| PAGE 76 — <i>cont.</i> | | | | |
| 7. idem Paulus eodem libro singulari et titulo | <i>libro omitted (index)</i> | <i>idem Paulus eodem libro et titulo</i> | <i>omitted</i> | |
| 8. iure mariti potest calumniae | qui iure marti | qui iure matris <i>omitted</i> | qui iure matri (a) causa | |
| 9. poena accusat poena | | poenam acuset poenam | | |
| 10. tum duos utiles | tantum duo | tantum utilis | tantum | tum (<i>Momm.</i>) |
| 11. expertus alias ut | experitus alia | experitur alios aut | experitur aut | |
| 12. aut infamis Ad | <i>omitted</i> | infamis (aut <i>omitted</i>) | infamis (aut <i>omitted</i>) | |
| 13-14. ut et Papi- nianus libro xv scripsit. Papinianus libro xv responsorum sub titulo | ut et Papianus li- bro xv scripsit kp. DCXXVIII papianus libro xv responsorum sub titulo | ut et Papianinus l. xv responso- rium sub titulis | <i>omitted</i> | |
| 14. Iuliam | iuliani | | | |
| 16. ciuis [ciuem Romanam] sine siue | sibi | ciuem | ciues me ciuem matrimoni | ciuem Romanam <i>in- serted by Momm.</i> ciuem uel (<i>Hus.</i>) |
| 17. matrimonio iure | iutre | | | |
| 18. ei opponetur | ea | | opponatur | |
| 19. libertinus sestertiorum milium habuit | liberatinus sextertiorum | restersiorum milia | sextertiorum | habeat (<i>Editors and Hus.</i>) |
| 20. propriam persequenti | | (a) proprium consequenti | | |
| 21. qui supra | <i>obliterated</i> | quod super | quod | quo (<i>Hus.</i>) |
| 22. adulterium iure | adulterum | | adalterium iuri | |
| 23. sponsam seuerus rescripserunt | | reuersus rescripserit | | in sponsam (<i>Editors</i>) (in) sponsam (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|----------------------------------|----------------------------|--|
| PAGE 78. | | | | |
| 1. Papinianus singulari de | papianus <i>omitted (index)</i> | | papianus singulas | |
| 2. emancipatam | emancipata | emancipatum | mancipatum | |
| 3. possit respondi eam | respondit | respondeo | posse ei | |
| 4. [quae] eo auctore | <i>omitted</i> eum auctorem | <i>omitted</i> auctorem | <i>omitted</i> auctorem | |
| 4-5. in manum | | in in manu | in manu | |
| 5. emancipatam | emancipatum | | mancipatam | |
| 6. pater prohi- betur | | patris prohibet | | |
| 7. Papinianus eodem libro singulari (et titulo) | papianus e. (l. <i>omitted</i>) s. e. t. | } Papinianus libro et titulus | papianus | et titulo should be <i>omitted</i> . as nowhere else, in citing this work, is a title added (Momm.) |
| 8. lex necisque | nec hisque | | ex lex | |
| 9. lege compre- hendi | legem compre- hendit | hec lex nec hisque | | |
| 10. uelis | uelle | uelle | uelle | uelis (Hus.) |
| 10-11. nam scire- cupio. Res- pondit | | } (a) <i>omitted</i> | | |
| 12-13. [sed occidi eam cum adultero iussisse] | | | | sed.....iussisse <i>supplied</i> by Momm. occidendi potestatem sed necessi- tatem imposuisse, <i>sup-</i> <i>plied</i> by Hus. |
| 13. maiore aequitate | maiolem aequi- tatem | maiolem aequi- tatem | | maiolem aequitate (Hus.) |
| 14. occidisse | occidisset | | | |
| 16. si quis adulterum | qui adulterium (<i>in-</i> <i>dex</i>) | qui | sic qui | quis Schul.; others delete either qui or et |
| 17. respondit | | R̄. | | |
| 18. tenebitur lege cornelia | legem corneliam | tenetur legem corneliam | | |
| 19. filia uoluntate casu | filiam | filiam uoluntatem | causu | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|---------------------------------|--|
| PAGE 78— <i>cont.</i> | | | | |
| 20. fugit filia | <i>omitted</i> filiam | | | • <i>Hus. omits filia and puts quod forte fugit after casu seruata est, line 19</i> |
| 21. punit | ponit | | | |
| 22. pater uoluit, sed quia | uoluisset qui | | patrem | |
| 24. Idem | papianus idem | | <i>omitted</i> | |
| 25. adulterio deprehensam occidit | deprehensum | | adulterium | |
| 26. legem incidat respondit nulla parte | lege incidit | lege R. nullam partem | occiderit lege | |
| 27. aperte | a parte | | | |
| 28. legem fecisse non ambigitur | fecisset non dubitantur non ambicitur | lege non dubitantur non ambigitur | non dubitantur non ambigitur | <i>after permittitur, line 29 the Berlin text has ambigitur sic dicit non dubitantur</i> |
| poena | ponat | poena sin | | |
| 29. inique honestissimo permittitur non | hisquae honestimo permittetur | idque <i>omitted</i> | idque | Inique (<i>Od. Mueller</i>) <i>See above, line 28</i> |
| 30. deportatione | | deportationem | | |
| 31. exilium poena eius statuatur | exitium statuitur | exitum poenas statuitur | exitum statuitur | |
| PAGE 80. | | | | |
| 1. idem sic | idem si (<i>Index</i>) item sic (<i>Text</i>) | idem si | idem si | |
| alterutrius marito accusante | alterius maritu (<i>index</i>) | accusantem | | |
| 2. est | esse | esse | esse | est (<i>Schulting</i>) |
| 3. respondit potes uideri ea | respondit | R. potes uidere eam | respondit uidere | |
| 5. diligentius laesae | lex et | diligens suum | diligens suum leseō | |
| 6. translaticie persequen- tur tale | | translati et persequuntur talem | | |
| 7. ministerio | | misterio | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|---|---|---|
| PAGE 80— <i>cont.</i> | | | | |
| 7. est eo perduxit | | <i>omitted</i> eum adduxit | | |
| 8. ut etiam accusante mancipia | | accusantem mancipio | ut etiam ut | |
| 9. a | | | ad | |
| 10. Paulus libro sententiarum [secundo] sub | Paulus liber sent. (secundo <i>omitted</i>) sub | Paulus libro sent. (secundo <i>omitted</i>) sub | } <i>omitted</i> | |
| 11. permittitur | | | | <i>Before permittitur patri Paul. has capite secundo legis Iuliae de adulteriis</i> |
| [patri] quam naturali adulterum | <i>omitted</i> <i>omitted</i> (a) adultero | <i>omitted</i> tam | <i>omitted</i> | patri Paul. |
| 12. filia cuiusque domi sui | | filiam domui | domus | cuiuscumque (Paul.) <i>omitted in Paul.</i> |
| 13. sua manu familias pater si adulterio | familiae | suam manum | manum familiam si pater adulterium | } <i>omitted in Paul.</i> |
| 14. prope est | | | (a) propest | |
| 15. permittitur tamen etiam ei maritus | | | marito si (a. sii) | permitti tamen ei debet (Paul.), permitti ta- men etiam ei debet (Hus.) |
| 16. deprehensus corpore | | deprehensus corpore | deprehensus | |
| 17. quaestum faciunt et liberos | questium et liberos | habent et liberos | questium et liberos | et liberos (Pith.); (Paul.) Codex Ve- sontin. omits et libertos |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|--|--|
| PAGE 80— <i>cont.</i> | | | | |
| 17. uxore | | uxorem | | |
| 18. maritum deprehensam | maritus deprehensum | maritus | maritus | maritus (<i>Paul.</i>) |
| 19. inpatientia | inpacientia | inpatientiam | | |
| 22. inuenta in uxore | inuentam uxorem | uxor | | |
| 23. maritus adulterum | adulterum | maritum adulterum | adulterum | } omitted (<i>Paul.</i>) adulterum (<i>Paul.</i>) |
| eum domi | maritus domui | maritum | maritus | |
| 24. qui | | domui | domui | |
| 25. dimiserit | | | que | dimisit (<i>Paul.</i>) |
| 26. tam adulteri | adulterii | adulterii | ta | adulterii (<i>Hus.</i>) |
| 27. sub specie data ualebit | datam | malebit | datam | sub spe (<i>Pith.</i>); sus- pectae (<i>Hus.</i>) |
| PAGE 82. | | | | |
| 4. manserit mansione muliebri asperna- mentum | mulieri (<i>Index</i>) | manserint mansionem | | |
| | | lepernamentum | apernamentum | |
| 5. moriantur rei | | quia rei | moriatur | |
| 6. Paulus libro sententia- rum II. sub titulo de adulteris | II. (<i>omitted in text</i>), given <i>in index</i> | } idem (<i>omit- ting the re- mainder</i>) | item de adulteriis | |
| 7. stuprauerit punietur | | | strupauerit punietur | punitur (<i>Paul.</i>) |
| 8. uoluntatesua stuprum | | puniatur | uoluntatem suam stuprum | |
| 8-9. dimidia parte | | dimidiam partem | dimidiam partem | |
| 9. multatur | | multarum | | |
| 10. parte | | martem | | |
| 12. constitutio cognoscitur | | | constitutio (<i>α.</i>) cogooscitur | |
| 12-13. (item Theodosianus) | idem theodosia- nus (<i>Index</i>) | | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings, |
|---|--|---|---|--|
| PAGE 82— <i>cont.</i> | | | | |
| 14. Impp. Valentinianus Theodosius Arcadius Auggg | ualentianus augg | imperatoribus ualentiniano theodosio archadio aggg | aag orentium | |
| 15. Orientium patimur | patiamur | | | |
| 15-16. urbem Romam uir- tutum | urbis Romae uirtutem | urbis Romae uirtutem | urbis Romae uirtutem | |
| 16. diutius effe- minati uiro | uiros | uiros | diutium et fe- minati uiros | uiro (<i>Mom.</i>); uiros (<i>Hus.</i>) |
| 16-17. contamina- tione | | contaminationem | | |
| 17. agreste illud a priscis | ageste ad | aggestis illum hac pristis | acreste illum | |
| 17-18. robur fracta | | robor facta | robor facta | |
| 18. plebe saeculis conditorum | seculi | plero regulis | pleue (a.) conditurum | pube (<i>Jac. Gothofredus,</i> <i>Hus.</i>) |
| 19. principum | printipium | principium | principium | |
| 19-20. orienti k(arissime)ac iuc (undis- sime) nobis | orienti kp. dcccc viii ac iuc nobis; (<i>index</i>). orienti; , , , , , kp. dccccviii ac iuc nouis (<i>text</i>) | orienti (<i>all the rest omitted</i>) | orienti (<i>all the rest omitted</i>) | orienti k(arissime) ac iuc (undissime) nobis (<i>Mom.</i>) |
| 20. laudanda igi- tur experien- tia tua omnes quibus flagiti usus | flagitiosus luxus | idem omnibus flagitiosuslus | omitted qui ius flagitiosus luxus | omitted (<i>Theod. C.</i>) flagitiosus luxus (<i>Hus.</i>) flagiti usus (<i>Theod. C.</i>) |
| 21. uirile muliebriter sexus | uiri | uirili muliebriliter sexu | uirili | uirile (<i>Theod. C.</i>) |
| 22. patientia nihilque dis- cretum | | patientiam nihilque discretu | patientiam | nihil enim d. uidentur (<i>Theod. C.</i>) |
| 22-24. occupatos, * ut fl. poscit i. a. omnibus eductos, p. d. u. lupanaribus | o. ut. fl. p. (pos- sit <i>in a.</i>) a. o. seductos p. d. u. lupanaribus | occupatus ut. fl. p. i. a. o. (a.) seductus (b.) seductos p. d. u. l. | seductos | <i>instead of</i> occupatos lupanaribus <i>Theod. C. has</i> huius modi scelus. |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|---|--|
| PAGE 82 -cont. | | | | |
| 24. flammae expiabit | flamme | flammas expiauit | flammae expiauit | flammis (<i>Theod. C.</i>) expiabunt (<i>Theod. C.</i>) |
| 25. intellegant sacrosanctum | sacrosanctis | sacrasanctis | intellegat sacrosanctis | |
| 26. sexum | (a) se sexum (?) | | | |
| 27. perdidisset | | (a) perdixisse (b) peraidisse propriae (a) maas | propriediae maias omitted | } pp. in foro Traiani viii. id. Aug. Valen- tiniano Aug. iiii et Neoterio cons. (<i>Theod. C.</i>) |
| prop. pr. id. maias romae | prop. prid. | | | |
| 28. atrio mineruae | minere | atrium minerue | minerue | |
| PAGE 84. | | | | |
| 4. muliere uxore | mulierem uxorem | mulierem uxorem | uxorem | |
| 4 5. pudenda patris sui | | pudendam | omitted | |
| 6. nuru sua moriantur | | nurum suam | nutru moriatur | |
| 8. Ulpianus li- bro regula- rum singu- lari sub titu- lo de nuptiis | U. l. regulari de nuptiis sub titulo | U. l. singulari nuptiis sub titulo | U. l. singulari de nuptiis titulo | |
| 9. liberos sint | sit | sit | sit | liberos infinite (<i>Ulpian</i>) sit (<i>Ulpian</i>) |
| 10. cognatos transuerso | | cogatur | cogatur transuersu | |
| 11. non poterant | | competerant | | |
| 12. autem tantum | | | | autem etiam (<i>Ulpian</i>) tamen (<i>MS of Ulpian</i>) |
| 13. filiam sororis nec amitam nec materteram | filia mater terram | filia amita matertera | filia matertera | sororis filiam (<i>Ulpian</i>) aut (<i>Ulpian</i>) uel (<i>Ulpian</i>) |
| 14. sint eam quae | | ea | ea | sit (<i>Ulpian</i>) eadem (<i>Ulpian</i>) quae (omitted by <i>Ulpian</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|-----------------------------------|---|
| PAGE 84 -cont. | | | | |
| 15. quae uel socrus fuit uxorem | | quem <i>omitted</i> | | nostra fuit (<i>Ulpian</i>) uxorem <i>before</i> nouerca <i>in previous line</i> (<i>Ulpian</i>) |
| 16. eam quam incestum matrimonium | | ea (<i>a.</i>) quam <i>omitted</i> incertum | incertum matrimonio | |
| 17. contrahit liberi potestate eius | liberis eis | contrahi eis | contrahi potestatem eis | eius (<i>Ulpian</i>) |
| 19. Paulus libro sententiarum [secundo]sub titulo de nup- tiis | paulusliber sen- tentiarum de nuptiis sub titulo | idem de nup- tus sub titulo | | de nuptiis |
| 21. filiam uxorem | | | filia <i>omitted</i> | |
| 22. possumus proneptem | non possumus pronept(a)e | non possumus | non possumus pronept(a)e | |
| 23. cognatio | | cognati | | |
| 24. ac non | hac | hos | hac <i>omitted</i> | |
| 25. nec socrum [nec] priuig- nam | nec <i>omitted</i> | non socrum nec <i>omitted</i> | nec <i>omitted</i> | |
| 26. incesti ducere | | incerti | incerte | dicere (<i>Hus.</i>) |
| 27. materteram sed qui uel | sed uel | | matertera sed uel qui | qui affinem uel (<i>Hus.</i>) |
| 28. remisso mulieri iuris errore | remissio mulieris iuris errore | mulieri sorore | mulieris errore | |
| 29. lege iulia ducta | legis iulia ductam | legem iuliam ductam | ductam | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercellh. | Other Readings, |
|---|--|---|---|--|
| PAGE 86. | | | | |
| 1. quinto sub titulo de nuptiis | (<i>index</i>) omitted de nuptiis sub titulo | de nuptiis, sub titulis | de nuptiis sub titulo | |
| 2. Diocletiani impp. talem | dioclitiani | imperatoribus tali | dioclitiani | |
| 3. punire commemorat | puniri | puniri (<i>a</i>) commerant (<i>b</i>) commemorant | puniri | |
| 4. Diocletiani maximiani | dioclitiani (<i>text</i>) dioclisiani (<i>ind</i>) | diodetiani | dioclitiani (<i>a</i>) maximini | <i>Just, C. has</i> impp. diocletianus et ma- ximianus A. A. et. Caess. |
| 4 5 [Augg. et constantii et maximiani] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | |
| 5. piis | | quis | quis | |
| 6. religiosis | | relegis his | | |
| 7. sancteque constituta | contitute | sancieque | | |
| 8. quibusdam | | quibusdum | | |
| 9. incesteque oportere | | incerteque opponere | incerteque | |
| 10. cum | aeum | | | |
| 11. nos disciplina cohortatur | non | disciplinam queortatur | | |
| 12. deos Romano | | romanis | deus | |
| fuerunt | fuerint | fuerint | fuerint | |
| 13. placatos futuros | (<i>a</i>) placatus futurus | placatus futurus | futurus | |
| 13. cunctos | | | cuncto | |
| 14. nostro agentes | nostro gentes | nostram habentes | | |
| 14-15. religio- samque et quietam et castam in omnibus mere colere perspexer- imus uitam | religiosasquae et quietem et castum in o. more c. p. u. | r. (<i>et omitted</i>) qu. et castam nominibus more c. p. u. | r. et quietem (<i>et omitted</i>) c. in o. more c. p. uitia | castum in omnibus morem colere per- spexerint assuetum (<i>Hus.</i>); religiosamque quietam et castam in omnibus more colere perspexerimus uitam (<i>Blumc.</i>). mere (<i>Mom.</i>). more mai- orum (<i>Cujas</i>) |
| 17. religiose atque ueteris | | religionem uestri | religione que uestris | |
| 18. honestati | honestatum <i>nearly obliterated in MS.</i> | honerati | honorati | honestatem (<i>Scal.</i> <i>Apograph</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|--|--|--|
| PAGE 86 - <i>cont.</i> | | | | |
| 18. coniunction- em | coniunctione | | coniunctione | |
| 19. qui inde deinceps nascentur seruata religione | qui cum deinceps seruata religione nascetur | qui deinceps seruata religionem nascitur | qui cum deinceps seruata religione nascitur | qui inde deinceps (<i>Mom.</i>) nascentur seruata re- ligione (<i>Mom.</i>) |
| 20. honestate | | honerate | | |
| 21. id sancta | sanctae | ita sanctus | (<i>a</i>) idco (<i>b</i>) ideo suprascripte | sancta (<i>Cujas</i>) |
| 22. nomina optineant affectus | afectos | nomine effectos | nomine optineamus defectos | |
| 23. consangui- nitati | consanguinitatis | consanguinitatis | consanguinitatis | |
| 24. [duratura]ea constat | ea | ea constant | ea | |
| 25. promiscuo ritu | | promiscui oritur | promiscuo ritum | |
| 26. instinctu execrandae | instinctum exercendae | instinctum exer- cendae; (<i>a</i>) ex- ercere ne | instinctum ex- ercendae ne respectum quicumque | instinctu execrandae (<i>Schult.</i>) |
| 27. quaecumque | | | peritiam | |
| 28. inperitiam ignorantia | inperitiam | peritiam ignorantiam | | |
| 29. ritu matrimonii admissa | ritum matrimonii si | admissa | admissam | |
| 30. seuerissime uindicanda contempla- tione | uidicanda contempla- tionem | contempla- tionem | uerissime contempla- tionem | |
| 32. ante incestisque se | | incertisque <i>omitted</i> | (<i>a</i>) <i>omitted</i> re | |
| 33. adeptos esse | | ademptos essent | ademptos | |
| 34. indulgentiam sciant post tam uitam | indulgentia sciat | post iam uti eam | posita uita | |
| PAGE 88. | | | | |
| 1. sibi esse conces- sam sciant tamen non legitimos | | esse c. sc. tamen non legitimos <i>repeated</i> | sibi quidem legitimo | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|-----------------------------|--|--|--------------------------------|
| PAGE 88. | | | | |
| 2. quos tam coniunctione genuerunt | coniunctionem | tamen genuerint | cons coniunctionem | |
| 3. infrenatis | inefrenatis | ineffrenatis | ineffrenatis | effrenatis (<i>Hus.</i>) |
| 4. oboedire | | obediss(a)e | obediss(a)e | |
| 5. uenia liberatos quos genuerunt | ueniam quod | ueniam liberatis genuerint | uel libertos genuerint | |
| 6. successione | | (a.) successione (b.) successione emne | | |
| arceantur | careatur | caretur | caretur | arceantur (<i>Puteanus</i>) |
| 8. et optassemus nec ante eius modi | negante | optaremus huiusmodi | omitted optaremus | |
| 9. esset | esse | esse | esse | |
| clementia | | clementiam | clementiam | |
| 10. corrigendum sed posthac | sed et post hanc | succurrendum sed et post hanc | sed et post hanc | sed (<i>Mom.</i>) |
| 10-11. religionem sanctitatem- que in conu- biis copulandis | | quo nobis | religione scitatemque quo nobis copulandi | |
| 11. se | | | rem | |
| 14. numero | | numerus | | |
| 15. matri- monium edicto | | edicti | (a.) matrimonio (b.) matriimonio | |
| 16. pronepte itemque matre proauia | } proneptemque prohabiae | } proneptite itemque | mater | |
| 17. sorore ex | omitted | omitted | omitted et | sorore (<i>Just. C.</i>) |
| 18. socru nuru ceterisque quae | socrus norus | socrus nurus nurus ceteras | socrus nurus | nuru socru (<i>Just. C.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|--------------------------------|--|
| PAGE 88— <i>cont.</i> | | | | |
| 19. antiquo iure uolumus | | | | iure antiquo (<i>Just. C.</i>) se uolumus (<i>Just. C.</i>) |
| 20. sanctum uenerabile | hanc tantum (a.) uenerabile (b.) uenerabiles | nanctum uenerabiles | nanctum uenerabiles | sanctum (<i>Putean.</i>) |
| 21. romana maiestas | romanam gesta | | | |
| 22. numinum suas religione | non mirum sua | nominum <i>omitted</i> | nominum religiones | numinum (<i>Putcan.</i>) |
| 23. pudorisque obseruatione | | pudorisqui obseruationem | | |
| 24. uenia quae | uenia | ueniam | | |
| 25. indulta | | iudulta | | |
| 26-27. quae in diem III kal. Ian. Tuscoetanulino cons. uidentur | que in diem tertio kl ianuariorum tuscoetanulino (a. anulio) cons. uidentur | que in diem tertio kl ianuariarum tusco et anulino cons. uidentur | <i>omitted</i> | |
| 27 esse commissaque | esse commissam | esse commissaque | | |
| 28. nominis sanctitatemque | numinis sanctitateque | | nomine | |
| 29. deprehenduntur admissa seueritate plectentur nec enim | deprehenduntur seueritatem | deprehenduntur amissa re ueritatem flectentur neque | deprehenduntur re ueritatem | |
| 30. ullam nefario quisquam se | nullum | nullam nephariae quicquam re | nullam | |
| 31. tam euidenti crimini | tam euidenti crimen | in tam euidentur crimen | in tam euidenti crimen | |
| 32. dubitabit inruere | infuere | dubitauit | dubitauit | |
| 32 33. Mai. Damasco Tuscoet Anulino cons. | maias damasco tusco et anulino const. | madias <i>omitted</i> | magias damasco et tusco | <i>Wanting in MSS. of Just. C.</i> |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|---|--------------------------|---------------------|
| PAGE 90. | | | | |
| 1. Hermogenianus sub titulo de nuptis | Er mogenianus sub titulo de <u>nuptis</u> | } <i>omitted</i> | de nuptiis | |
| 2. Impp. Diocletianus Maximianus Augg. Fl. | Impp dioclitianus <u>Maximianus</u> agg. fl. | imperatoribus diodetiani maximiani augustos (fl. <i>omitted</i>) | a. (fl. <i>omitted</i>) | |
| 3. His incestas | | <i>omitted</i> incertas | incertas | |
| 4. clementia | | clementiam | clementiam | |
| 5. quam rescierint ilico | | cum (a.) rescirent illi quoque | | |
| 6-11. Prop. id. Mart. [Tiberiano] et Dione cons. Hanc qu. c. G. t. d. n. in. qu. e. t. et s. a. t. et die [et cons.] i. e. . . . adulteris | prop. id <u>Mart</u> et diogene cons. hanc. . . . die (et cons <i>omitted</i>) id est c. p. V id. Iun. dioclitiano adulteris (adulterii <i>index</i>) | } idem | de adulteris | |
| 12. qui filiam uxorem duxerat per errorem | que u. d. p. errorem | per errorem uxorem duxerit | filia | |
| 13. praeueniretur a delatore, diremit coitum | perueniretur dirimit cohitum | ahelatiorem dirimet choitum | a delatorem dirimitum | |
| 14. respondit ei coitu | et coniunctae | R. et coniunctae | et coniunctae | coitu <i>Mom.</i>) |
| 15. errore diremit coitum | errorem | errorem dirimit | errorem coitu | |
| 16. creditur uoluntatis | | | creditor uoluptatis | |
| 17. gradu tale | grado talem | gradum talem | talem | |
| 18. dicitur in eos, qui incestas | | incertas | } de his incertas | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--------------------------|-------------------------------------|-------------------------------------|---|
| PAGE 90— <i>cont.</i> | | | | |
| 19. incesti legem | incestis lege | incerti | incerti | |
| 20. nutu isdem | (a) nuto (b) noto | hisdem | hisdem | |
| 21. adstipulan- tibus | abstipulantibus | abstipulantibus | abstipulantibus | |
| 24. uxore | uxorem | uxorem | | |
| 25. patris | patri | | | |
| PAGE 92. | | | | |
| 1-2. sorore.concubue- rit cum | | } <i>omitted</i> | | |
| 1. dicit | | | dicet | |
| 2. nuru | nura | | | |
| 3. dicit | | | dicet | |
| 4. socru dicit | socrus | | dicet | |
| 5. sorore dicit | | sororem | dicet | |
| 6. sorore | | sororem | | |
| 7. concubuerit | | dormierit | dormierit | |
| 8. sorore uxoris dicit | | sororem (a. uxorem) so- roris | dicet | |
| 9. uxore omnis | omne | uxorem | | |
| 10. pecore dicit | | pecude | dicet | |
| 14 15. [quoquo modo diurnum] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | quoquo modo diurnum (<i>Blume</i>) |
| 15. autem si se audeat telo defendere | autem si se aut tello | aut ensis se aut defenderit | aut tensis se aut defenderis | autem si se audeat (<i>Schult., Blume</i>) |
| 16. scitote consulti sicut | si cui | sitote consultum si cui | | |
| 17. manifestat | | manifestas | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|---|---|
| PAGE 92— <i>cont.</i> | | | | |
| 18. nocte | | | noctem | |
| 18-19. fur et per- cusseriteum aliet mortu- us fuerit | furem percus- serit | fur percusserit | <i>omitted</i> | |
| 19. hic | hi | hi | | |
| 20. fuerit mortis | <i>omitted</i> morti | | morti | |
| 21. morietur | | | moriatur | |
| 22-23. Paulus libro senter- tiarum V ad legem Cor- neliam de sicariis et ueneficis | (liber <i>index</i>) beneficis | a legem beneficis | (a) idem <i>omitted</i> | |
| 24. cum defenderet | defendere | con defendere | defendere | |
| 25. occiderit lege qui | | legem si | occiderit eum si | |
| 28 Ulpianus libro xviii ad edictum sub titulo quadrupes | Ulpianus libro viii (<i>text and index</i>) | Ulpianus libro viii tituli quadrupedem | idem idem | octauo decimo (<i>Digest correctly</i>) |
| 30. iniuria adicitur | iniuriam | iniuriam adigito | iniuriam adigitum | |
| PAGE 94. | | | | |
| 1. iniuria id esse | iniuriam | iniuriam adesse | iniuriam | |
| 2. [iniuria] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | |
| 3. quemcumque alium qui | quicumque | quicumque alio | quocumque | si quemcumque (<i>Dig. st</i>) quis (<i>Digest</i>) |
| 4. iniuria occidissee | occisisse | iniuriam occisisse | iniuriam occisisse | |
| 6. aequae permittit sed ita de- mum | aequae sed ita lex demum | aequae sed ita lex demun | ea quem permitti sed ita lex demum | aeque (<i>Cujas</i>) <i>perhaps the original had necare permittit sed ita demum lex instead of aequae... demum</i> |
| 7. defendat an lege | defendatur legem | a ¹ si a ² | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|---|---|
| PAGE 94— <i>cont.</i> | | | | |
| 7-8. et Pomponius dubitatum haec lex non sit in usu | nunc haec lex, | { idem | et Pomponius deuitat nunc haec lex, n. s. i. u. | { <i>Hus. omits non</i> |
| 8. et si quis noctu | | si | idem si | metu quis mortis (<i>Digest</i>) |
| 9. furem dubitamus quin lege Aquilia [non] teneatur | qui in <i>omitted</i> | fuere ¹ qui in legem Aquiliam <i>omitted</i> { teneatur uideamus ² | qui in <i>omitted</i> | dubitabitur (<i>Digest</i>) non (<i>Digest</i>) |
| 11. iniuria etiam lege cornelia | | iniuriam legem corneliam | | et (<i>Digest</i>) lege (<i>omitted Digest</i>) hic accipere (<i>Digest</i>) |
| 12. accipere hic oportet non et | | oportet | non <i>omitted</i> | et rightly <i>omitted in Digest</i> |
| 13. iniuriarum quod | iniuriam | iniuriam | iniuriam <i>omitted</i> | |
| 14. factum est, contra ius, culpa | factum contrarius | factum culpam | | |
| 16-17. ulp...tit. de furiis | | { idem | idem de furtibus | |
| 18. forum nocturnique | furtum coctorniquae | furem quodturniquem | furem et nocturni qui | forum (<i>Pith.</i>) nocturniquoque (<i>Hus.</i>), nocturnique (<i>Blume</i>), nocturni (<i>the preceding phrase omitted</i>) (<i>Digest</i>) |
| 19. ordinem dummodo in | dum | dum modum | ordine dum modum | dummodo in (<i>Digest</i>) |
| 20. sciamus | | | | sciamus (<i>after dummodo in Digest</i>) |
| publici temporari non egrediendum | temporarium | publicis temporalium monendum | publicis temporarium | temporarii (<i>Digest</i>) |
| 21. idem | ideo (<i>text and index</i>) | | idem et in till line 24 adficiendi erunt after inuenta est p. 96 l. 12 ualneariis | |
| balneariis | balneariis (<i>text</i>) balneriis (<i>index</i>) | balnearibus | | |
| sed se telo | | telo | et telo | telo se (<i>Digest</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin; | Vienna, | Vercelli. | Other Readings. |
|--|---|--|-------------------------------|--|
| PAGE 94 - <i>cont.</i> | | | | |
| 21-22. uel effrac- tores uel | uel efrac- tores uel | | factores res uel | |
| 22. ceteri his similes | ceteris miles | ceteri similes | ceteris miles | ceteri his similes (<i>Digest</i>) |
| 23. poena humiliores, honestiores uero relega- tione adficiendi | p(o)enas | p(o)enas humiliores hon- estiores uero relegationem | p(o)enas | uel. honestiores relega- tionis (<i>Digest</i>) |
| 25 Paulus libro sententiarum II sub titulo de furibus | P. liber s. (<i>text</i>) P. liber s. II. (<i>index</i>) s. t. d. f. | efficiendi idem | idem de furi- bus | |
| 26. damnatus | | | | condemnatus (<i>Paul.</i>) |
| PAGE 96. | | | | |
| 1. qui contractat | | contraectat | (a) contractat | qui dolo malo (<i>Paul.</i>) (<i>Hus.</i>) |
| 3. et qui intra terminos | qui <i>omitted</i> (a.) terminus | terminis | et qui infra | |
| 3-4. loci, unde furatus est | locum defuratus est | fur est | | unde quid (quis <i>good</i> <i>M.S.S.</i>) sustulerat (<i>Paul.</i> , <i>Hus.</i>) deprehensus (<i>Paul.</i>); cum reprehensus (<i>Hus.</i>) |
| 4. comprehensus | | | | |
| 4 5. locum quo 5. destinauerat peruenerit nec manifestus est fur in | locum (quo <i>omitted</i>) d. p. nec manifestatus e. f. intra | <i>omitted</i> | locum quem | perueniret (<i>Paul.</i>) fur est (<i>Paul.</i> , <i>Hus.</i>) |
| 6. rapiendo comprehensus eum fecisse | | | | faciendo (<i>Paul.</i> , <i>Hus.</i>) deprehensus (<i>Paul.</i>) eum furtum fecisse (<i>Paul.</i>); furtum fecisse (<i>Hus.</i>) |
| 7. tenetur | | (a) <i>after</i> tenetur has quidem furtiuam | | is tenetur (<i>Paul.</i> , <i>Hus.</i>) |
| 7-8. est inuen- tum | | | | quaesitum et inuentum est (<i>Paul.</i> , <i>Hus.</i>) |
| 8. is | his | <i>omitted</i> | (b) his (a) <i>omitted</i> | |
| qui rem ali optulit | | quidem mali obtuli | mali | |
| 9. se inueniretur actione is | actionem his | rem inuenitur actionem ira | actionem his | |

TEXTUAL VARIANTS.

| Line and Word, | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|-------------------|------------------------------|-------------------|--|
| PAGE 96 — <i>cont.</i> | | | | |
| 10. perisse conceptiua autem | | | | perdidisse (<i>Paul.</i>) concepti is (<i>Paul.</i>) |
| 10-11. qui rem conceptit et in- uenit oblatis agere potest | oblatae potest | agere | <i>omitted</i> | <i>omitted</i> |
| 12. concepta | concepti | concepta | concepta | concepta et (<i>Paul.</i>); concepta id est (<i>Pith.</i> , <i>Hus.</i>) |
| 16. testis | testes | | | |
| 18. contentio | contemptio | | | |
| 21. ei delebitis | deletis | <i>omitted</i> delebit | deletis | |
| 22. medio ceteri | medium | | ceteris | |
| 24. paulus libro singulari titulo | p. liber s. | idem tituli | <i>omitted</i> | |
| 25. legem | lege | | | |
| 26. dixerit ac | dixerint | haec esse | esse | |
| 27. esset | | | | |
| PAGE 98. | | | | |
| 1-2. paulus libro sententia- rum quinto sub titulo ... et de quaes- tionibus | p. liber | idem | <i>omitted</i> | et de quaestionibus omitted in <i>Paul.</i> |
| 3. Hi | | | | hi omitted in <i>Paul.</i> and <i>Digest</i> |
| falso uel uarie | falsum uel aliqua | falsum uel aliqua | falsum uel aliqua | falso uel uarie (<i>Paul.</i>), <i>Hus.</i> adds uel oblique |
| dixerunt utriusque | utriusque | dixerint | dixerit | |
| 4. prodiderunt | | prodiderint | | |
| 4-5. aut in exili- um.....sub- mouentur | | | | a iudicibus competen- ter puniuntur (<i>Digest</i>) |
| 4. exilium aguntur insulam | | exilio arguntur insula | exilio | |
| 5. submouentur | submouetur | submouetur | submouetur | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|--|--|
| PAGE 98— <i>cont.</i> | | | | |
| 6-7. Idem libro [sententiarum quinto sub titulo] ad legem Corneliam de sicariis et ueneficis | idem liber ad legem corneliade s. et beneficiis (<i>index</i>). idem libro ad legem corneliam de sicariis et beneficiis (<i>text</i>) | idem libro ad legem cornel- iam de sicariis et beneficiis | idem librum ad legem cornelia de sicariis et beneficiis | Idem libro sententiarum quinto sub titulo (<i>Blume</i>); idem (eodem) libro (sub titulo) ad legem corneliam de sicariis et ueneficis(<i>Hus.</i>) |
| 8 cornelia poenam infigit | corporalia penam infigit | poena | infigit | |
| 9. eiusque furtiue | furtique | | | eiusue (<i>Paul. correctly</i>) |
| 10. uendiderit | | et uendiderit | | |
| 11. falsumue quo mortisue | mortis suae | falsum quod | falsum | |
| 12. poena | | poenam | poenam | |
| 13. uindicari crucem | uindicare | uindicare | uindicare cruce | |
| 14. subiciuntur | | | | obiciuntur (<i>Paul., Hus.</i>) |
| 15 16. Paulus libro senten- tiarum quinto sub titulo ad legem corneliam testamenta- riam | Paulus liber s. V s. t. ad legem c. testamentaria (a lege c. testa- mentariam <i>index</i>) | P. l. s. quinque s. t. a. l. c. t. | (a) idem (b) Paulus | |
| 17. qui perhibendum | hii qui | his qui | hi qui | qui (<i>Paul.</i>) perhibendum uel uerum non perhiben- dum (<i>Paul., Hus.</i>) |
| 18. pecuniam ue ut | | | pecunia uelut | |
| 19. corruperit | | | corruperat | |
| 20. capite | capite | | | |
| 20 21. ipso iudice | ipso iudicem | ipsum iudicem | | |
| 21. deportantur | deponantur | deponantur | deponantur | deportantur (<i>Paul.</i>) |
| 23. falsum ueritate uero | falsus (<i>index</i>) uerum | | ueritatem | |
| 25-26. Ulpianus libro octauo [de officio proconsulis] s. t. d. p. l. c. testamentariae | ulpianus sub titulo de poena legis corneliae testamentaria libro viii | (ulpianus sub titulo <i>omitted</i>) de poena legis corneliae testa- mentariae libri viii. | idem | <i>Blume supplics</i> de officio proconsulis |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings, |
|---|--|----------------------------------|---|---|
| PAGE 98— <i>cont.</i> | | | | |
| 27. senatus consultum | | senatum consultum | | |
| 27-28. statilio et tauro consulibus | | statio et tauro consulibus | | statilio Tauro et Scribonio Libone cos. (<i>Pith., Hus.</i>) |
| 28. quo poena qui quid | quidquid | quod poenam quicquid | quidquid | |
| 29. quam testamentum [dolo malo falsum] signariue | <i>omitted</i> signaueriue | <i>omitted</i> signari uel | <i>omitted</i> | in testamento (<i>Digest</i>) dolo malo falsum (<i>Digest</i>) |
| PAGE 100. | | | | |
| 1-2. item qui ad falsas testationes faciendas testamentaue falsa inuicem dicenda aut consignanda dolo malo coierint | item (idem <i>in-dex</i>) quod f. t. f. testamenta uel f. i. d. aut cons. dolo malo curauerit licinio V. et tauro cons. | <i>omitted</i> | item quod f. t. f. testamentauel f. i. d. aut cons. dolo malo curauerit | item qui f. t. f. testimoniaue f. i. d. dolo malo coierint (<i>Digest</i>) <i>Mom. has</i> item qui ad f. t. f., etc. item qui falsas testationes faciendas aut consignandas testimoniaue falsa inuicem dicenda dolo malo curauerit (<i>Hus.</i>) |
| 3. licinio V et tauro cons. item instruendam | struendam | | <i>omitted</i> | |
| 4. testimoniaue pecuniam pactusue | pecunia | pecunia pactus sui | testimonia uel pecunia | instruendam (<i>Pith.</i>) on comparison with <i>Digest</i> xlviii., 10, 1 and <i>Digest</i> xlviii., 10, 20 (litem in) struendam (<i>Hus.</i>) |
| 4-5. [societatemue] | societatem | societatem | societatem | societatemue (<i>Mom.</i>) |
| 5. aliquam de ea re pactionem | <i>delationem</i> | <i>delationem</i> | <i>delationem</i> | de ea re pactionem (<i>Mom.</i>) aliquam obligationem (<i>Hus.</i>) either reading can be supported from <i>Digest</i> xlviii. 10, 1. 20, falsi poena coercentur et qui ad litem instruendam aduocatione testibusue pecuniam acceperunt, obligationem pactionemue fecerunt societatem inierunt. |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna, | Vercelli. | Other Readings. |
|---|---|--|---|---|
| PAGE 100— <i>cont.</i> | | | | |
| 6. item ad accusationem | ab occisione (<i>index</i>) | idem | idem | ad accusationem (<i>Pith.</i> <i>rightly from Digest</i> xlvi. 13, 2) |
| 6-7. consulto quod | | consultus | | |
| 7. Cotta messalla | cocta messella | cocta metalla | <i>omitted</i> mesalla | <i>cooss. inserted by editors</i> <i>after messalla</i> |
| coercetur | cohercentur | cohereentur | cohercendum | |
| 8. denuntian- dum uel non denuntiandum | uenundandum uel denudan- dum non | uenundandum uel denudan- dum non | (<i>a.</i>) uenundan- dum (uel den- n u d a n d u m non <i>omitted</i>) (<i>b.</i>) remittendum uel | denuntiandum uel non denuntiandum (<i>Cujas</i>) (<i>Cf. Dig.</i> xlvii., 13, 2, xlvi., 10, 1, 2) |
| remitten- dumue | | | | |
| 9. consulto | | consultus | | |
| 10. est poena | sit | sit | sit paenam | |
| 13. item moyses | | idem | idem moyses dicit | |
| 14. aduersus | | aduersum | | |
| 15. Ulpianus libro viii [sub titulo] ad | <i>omitted</i> | } <i>omitted</i> <i>omitted</i> <i>omitted</i> | <i>omitted</i> <i>omitted</i> | libro viii (<i>Cujas</i>) |
| 17. lege testimonium | legem | legem in testimonium | legem | lege (<i>Hus.</i>) |
| 18. capite octogesimo septimo et capite | et vii | octogesimi et viimi | capitulo capitulo | |
| 18-19. octogesimo octavo | | octogesimi octavi | | |
| 19. [capite octo- gesimo octauo] his | his uerbis | his uerbis | his uerbis | capite octogesimo oc- tauo <i>added by Lach.</i> his uero (<i>Lach.</i>) |
| 20. hac ne liceto | in hac ne licito | in hac nec licito | in hac nec licito | |
| 21. parenteue libertoue libertiue libertaue liberauerit | parentemu(a)e } libertus liber- tauerit | parentemu(a)e liberta uel libertus liberta- uerit | parentemu(a)e liberto uel libertus liberta- uerit | libertiue libertaue liberauerit (<i>Mom.</i>); libertaue liberauerit (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|---|--|---|
| PAGE 102. | | | | |
| 1. quive inpubes erit iudicio publico damnatu est qui | inpuber erit <i>omitted</i> | quibus inpuber erit <i>omitted</i> | qui uel inpuere erit <i>omitted</i> | impuberes erunt (<i>Digest</i>) iudicio p. damnatus erit qui (<i>Digest</i>) |
| 2. in integrum est quive custodiaque | custodiaqu(a)e | custodiamque | in integrum eorum qui uel custodiaqu(a)e | erit (<i>Digest</i>) custodiaue (<i>Digest</i> <i>correctly</i>) |
| 3. publica erit quive depugnandi auctoratus quive | | publicauerit depugnandia (a) dictoratus | qui uel qui uel | |
| 4. ad bestias depugnare se locauit locauerit praeterquam qui iaculandi | ad <i>omitted</i> se <i>omitted</i> qui iaculandi | <i>omitted</i> (a.) lacauerit praeterquem | a bestias qui uel | ut depugnaret (<i>Digest</i> , <i>Hus.</i>) locauit <i>omitted</i> in <i>Digest</i> |
| 5. causa urbem est erit palamue corpore | corporem | causam steterit corpus ' | urbe steterit palam uel | quaeue palam (<i>Digest</i> , <i>Hus.</i>) <i>omitted</i> in <i>Digest</i> |
| 6. feceritue, quive ob dicendum | fecerit | <i>omitted</i> | qui uel | after dicendum <i>Digest</i> inserts uel non di- cendum |
| 7. iudicatus | | | | iudicatus uel conuictus (<i>Digest</i>) |
| 7-8. nec uo [lens] quis eorum hac lege in reum testimonium dicit | neuequis eorum hac legem in reum testimo- nium dicat | neque quis eo- rum hac lege in hoc testi- monium dicat | neque quis eo- rum hac lege in reum testi- monium dicat | nec uolens quis eorum hac lege in reum testi- monium dicit (<i>Mom.</i>) nequis eorum hac lege in reum testimonium dicat (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|-----------------------|--|
| PAGE 102— <i>cont.</i> | | | | |
| 8-9. octogesimo septimo his inuiti in reum testimonium | octogesimo septimo his homines inuiti in reum testimonium | octogesimi vii hi homines inuiti in reum testimonium | octoginta septimonium | <i>Mom. deletes homines octogesimo septimo Hi homines inuiti in r. t. (Hus.)</i> |
| 9. ne dicunto qui sobrinus | nec dicunt | nec dicunt consobrinus | nec dicunt | ne dicunto (<i>Lach., Hus.</i>) |
| 10. propioreue cognitione | propiore uere | propioreue cognitionem | qui priore uel | |
| 11. priuignusue reliqua | priuignusque (<i>b</i>) reliqua | priuignusque | priuignus qui | |
| 12-13. Paulus libro sententiarum[v]sub titulo de testibus et quaestionibus | (paulus libro <i>omitted in index</i>) p. l. sent. s. t. d. t. et. qu. (<i>text</i>) | <i>omitted</i> | <i>omitted</i> | et quaestionibus (<i>omitted in Paul.</i>) |
| 14. suspectos | susceptos | (<i>b</i>) suscoptos (<i>a</i>) susc(o)eptus <i>omitted</i> | susc(o)eptus | suspectos gratiae (<i>Paul.</i>) |
| et quos de domo | quod | | | |
| 15. eduxit infamauerit | | deduxit | deduxit | de domo produxerit (<i>Paul., Hus.</i>) infamarit (<i>Paul.</i>) |
| 16. in testibus spectari | <i>omitted</i> expectari | ex(s)pectari | ex(s)pectari | teste (<i>Paul.</i>) |
| 16-17. in adfinem | si sint adfinem | in hac finem | in adfinem | |
| 18. patroni et | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | <i>omitted in Paul., added by Hus. cf. Digest xxii., 5, 4</i> |
| 19. uerae | hi uere | iubere | iuuere | uerae (<i>Paul.</i>) |
| 20. corrumpit | | | corrumpit | |
| 23-28. moyses liberabitur | | | | Moyes liberabitur <i>is also to be found in the Beauvais Codex</i> |
| 23. moyses dicit | | moyses dixit | moyses dixit | respondit moyses (<i>Beauv. Codex</i>) |
| 24. aliquis proximo suo | aliquid proximum suum (<i>index</i>) | | | |
| aut uas | | | et | aut aurum aut uasa (<i>Beauv. Codex</i>) |
| 25. de domo si inuenitur | | de eo homo | | si inuentus fuerit (<i>Beauv. Codex</i>) |
| qui furatus est | | qui furatus est <i>twice</i> | | |
| 26. reddet fur accedet | fur accedat | reddat furanti de | eam rem reddat | reddat (<i>Beauv. Codex</i>) fur accedat (<i>Beauv. Codex</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|-------------------------------------|---|--|---|
| PAGE 102— <i>cont.</i> | | | | |
| 26-27. is qui com- mendatum susceperat | his q. c. s. | is que | | } dominus domus (<i>Beauv.</i> following <i>Jerome's version</i>) |
| 27. ante | | stabit ante | | |
| iurabit | iuravit | | iuret | |
| 27-28. nihil se ne- quiter egisse de omni re | | n. s. u. egisset de o. re | | nihil s. u. e. malest (<i>i.e.</i> male se) cogitasse neque interceptis de- tinnuire (<i>Beauv. C.</i>) |
| 28. commendata | | commendatam | | |
| PAGE 104. | | | | |
| 1. Modestinus libro differ- entiarum se- cundo [sub titulo] | sub titulo (<i>omit- ted</i>) | } omitted | omitted | sub titulo (<i>added by Mom.</i>) |
| 2. et commodato | uel commendato | | et commendato | et commodato (<i>Hus.</i>) uel commendato (<i>Mom.</i>) commodati (<i>Hus.</i> , <i>Mom.</i>) |
| 3. commodati | comendati | quomodati (?) | commendati | |
| et | est | est | est | |
| 4. depositi culpa | de depositi culpam | | | |
| 4-5. condemnan- dus | | condempnatus | | |
| 5. commodati enim contractu utriusque | comodati contractus | | commendati enim omitted | <i>Hus. adds in</i> |
| | | utrisque | utrisque | |
| 7. causa sola uertitur et ibi | causula tibi | causam solam uestitur | uestitur | |
| 9. iudicium | iudicio | iudicio | iudicio | |
| 10. uxoriae et culpa | uxori et culpam | luxuriae | uxori omitted | |
| 11-13. iudicium dolus. non etiam culpaliceat in tutelae iudicium utrumque d. c. s. pupilli non etiam | } iudicio dolus non etiam | iudicio d. hi. n. e. c. | iudicio d. n. e. c. | |
| | | liceat in t. iudicio u. d. c. s. polli n. e. | liceant in t. iudicio utrorumque d. c. s. p. n. e. | |
| 13. tutoris | | (b) rectoris | | |
| 14. administra- tione | | administra- tionem | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|---------------------------------|---|
| PAGE 104— <i>cont.</i> | | | | |
| 14. uersetur damnatus | uersatur | uersatur | uersatur d. non fit | |
| 14-15. infamis est qui uero commodati damnatur | | } <i>omitted</i> | | |
| 15. fit infamis alter | | sit infamus alter enim | sit | |
| 16. culpam actione | | actionem | culpa | |
| 17. depositi conuentus | deposito | depositus | deposito | depositi (<i>Digest</i>) conuentus seruo consti- tuto (<i>Digest</i>) cibariorum (<i>Digest</i>) |
| cibariorum | ciuariarum | cybariarium | ciuariarum | |
| 18. at is commodata | ad his com(m)endata est | ad his (b) com(m)en- data est (a) commen- dantem | ad his com(m)endata est | |
| cibariorum | ciuariarum | cybariarum | ciuariarum | cibariorum (<i>edd.</i>) |
| 19. iure perse- quitur | | sive persequen- tium | | |
| 20. aegrum | | | eorum | |
| 20-21. res depo- sita subripiatur | respondit de- posita subriatur (<i>index</i>) | de dominos sub- ripiantes subripiantur | } <i>omitted</i> | |
| d o m i n u s dumtaxat furti actionem | dominus domui | dominus domui furtu | domus domui actione | dominus dumtaxat (<i>Schult.</i>) |
| 22. eius | <i>omitted</i> | | | |
| 22-23. in rem factas | | idem facta | | |
| 23. rem retinere est | se sit | se sit | se retineri sit | rem (<i>Edd.</i>) <i>grammatically should be est (Mom.)</i> |
| 24. soluendo fuerit actio commodati | soluenda fuerit actio | soluenda fuerit actio | soluenda fuerit actio | soluendo fuerit actio (<i>Pith.</i>) |
| 25. semper simplum | | rem per | commodatis rem per simplo | |
| 26. uel naufragii incendii | | naufragii incendiu | | |
| 27. res depona- tur | | reponatur | re deponatur | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|------------------------------|---|
| PAGE 106. | | | | |
| 1-3. Hermogenianus sub titulo depositi huiusmodi inserit constitutiones: Idem Augg [et] Caess. Fl. Munatio | Ermogenianus sub titulo de (de omitted in index) depositi huiusmodi inseri constitutione idem augustus cesar flavius munatio | idem | omitted | H. sub t. de deposito h. i. c. : I. Augusti et Caess. Fl. M. (Hus.) |
| 4. casum praestare certi | casu | casu praestari | casu et rei | |
| 5. itaque proponas ui fuere | sui | utique sui | propaenas suis fuerit | |
| 7. rector | | rectorem | | |
| 8. necti adhibita uarietate | nectu uarietatem | nec adhibitam uarietatem | nec | necti (Hus.) |
| 9. ortum sua ratione decidetur | hortum rationem | (a) certo (b) certum suam nationem decidatur | suam natione decidatur | |
| 10. subscripta VIII K. Iul. Serdica Augustis cons. | Serdica augustus cesaribus | | | |
| 11. Idem Augg. et Caess. Fl. Aurelio Altenico Andronico | idem augustus (aug. ind.) et cesare (ces. ind.) Fl. Aurelio altenico andronico | omitted | omitted | idem Augusti et Caesares Fl. Aurelio Attenico Andronico (Hus.) |
| 11-12. eos penes 12. quos materiam proponis | eus perne materia | eas poenas quas materia | eas paenas materia propaenis | te proponis (Hus.) |
| 13. rectorem qui eos | quod | rectorum quod | quod | qui eos (Hus.) |
| 14. fecerint quominus possint | fecerunt cominus | cominus | cominus positi | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin, | Vienna. | Vercelli. | Other Readings. |
|--|---|--|--|---|
| PAGE 106— <i>cont.</i> | | | | |
| 15. conpellet Subscripta VI. k. April | subscripta kl. april | VI compellit subscripta kl. aprilis | VII compellit | compellet (<i>Hus.</i>) |
| 15-16. Sirmi Caess. cons. | syirmi cess. _____ cons. | omitted | } omitted | } Sirmii C. { Cons. (<i>Hus.</i>) |
| 17. Idem Augg. et Caess. Aurelio et Eustathio et Diosimo | idem augustus et cesares a. et eustatio et diosimo | } idem | | |
| 18. suscepit aliud | | accoepit alium | | |
| 19. memor | | | memoria | |
| 21-22. qualitate suam ordinabit sententiam subscripta XVIII k. Nou. Appiaria | suae ordinavit sententia subscri. XVIII k. nou. appiaria | qualitatemque ordinavit } omitted | suae ordinavit omitted | <i>Mom. suggested</i> XVI k. nou. appiaria caess. cons. (<i>see his essay,</i> <i>Die Zeitfolge der</i> <i>Verordnungen</i> <i>Diocletians in Actis</i> <i>Acad. Berol.</i> , a., 1860, <i>pp.</i> 438, 442 |
| 23. Idem Augg. et Caess septimiae quadratilae | idem augustus et cesares (ce- sare <i>index</i>) uii et quadratille (quadratille <i>index</i>) | } idem | omitted | |
| dolo malo | | dolum malum | | (quadratillae omitted <i>Just. C.</i>) omitted <i>Just C.</i> |
| 24. depositum conuentus ad eius | posito | | omitted | conuentus et condem- natus. <i>Just C</i> |
| 24-25. restituti- onem cum infamiae periculo arguetur | cum infam(a)e periculo resti- tutionem | cum infam(a)e periculo resti- tutionem | cum infam(a)e periculo resti- tutionem | restitutionem cum infa- miae periculo (<i>Just.</i>) |
| 25-26. Subscripta prid. idus decembres nicomedia CC. cons. | scripta id decem ii comedia ccs. cons. | urguntur subscripta pridie id. dec. omitted | } omitted | omitted <i>Just. C</i> omitted <i>Just. C.</i> nicomediae (<i>Hus</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna, | Vercelli. | Other Readings. |
|--|--|--|--------------------------------|---|
| PAGE 106— <i>cont.</i> | | | | |
| 27. Paulus libro secundosen- tentiarum sub titulo | paulus <u>lib.</u> (liber <i>index</i>) sent. sub titulo secundo | } idem | <i>omitted</i> | <i>some such phrase re- quired as sed pariter seruandum (Mom.)</i> |
| 28. alium id | | | | |
| 29. seruandum | | aliud | | |
| 29-30. quod [ad] breue | quod breue | quod breuem | quod breue | |
| 31. metu ruinae incendii naufragii | | me et in urbi nec incendunt naufragium | meturbine incendunt | |
| PAGE 108. | | | | |
| 3. causa deponit suspectam habens | habent | cause (deponet <i>omitted</i>) suspecto | } <i>omitted</i> suspecta | |
| 3. rem commendat sacculum | res commodat sacellum | re commodat sacellum | commodat sacellum | sacculum (<i>Paul. and Digest</i>) |
| 4. [signatum] penes quem | <i>omitted</i> poenae | <i>omitted</i> poenes que | <i>omitted</i> paenis | signatum (<i>Paul. and Digest</i>) |
| 5. contrectauit actio | | contrectauit actioni | contrectauit | contrectauerit (<i>Paul., Digest, Hus.</i>) |
| 6. ex | hec | | | |
| 7. praestantur | | | prestentur | |
| 8. penes se depositam | poenae se posita | poenes sedem positam | poene | |
| 9. directam utilem | direptam | direptam | direptam ut ille | |
| 10. eaque uti tibi permisero | eam hanc quem tibi comissero | eamquae tibi promisero | eamquae tibi permisero | eamque tibi permisero (<i>Mom.</i>). eaque uti tibi permisero ; <i>Blume</i> <i>after collating Digest</i> <i>XII, 1, 9, and XII. l. 10</i> |
| 11. mutua deposita | mutuam depositam | mutuam | | |
| 12. depositam redemeris post | deposita redemeris postquam | redemeris eam postquam | redemeris eam- que postquam | redemeris post (<i>Mom.</i>) ; postquam redemeris (<i>Krueger</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|---------------------------|--|--|
| PAGE 108 <i>-cont.</i> | | | | |
| 13. semel admis- so perpetua | semel amisso perpetuam | se mala misso perpetuo | semel amisso | |
| 13-14. actione teneberis ex causa depo- siti lege duodecim tabularum in duplum actio | actionem t. et c. d. legem d. t. in d. a. | } <i>omitted</i> | actionem tene- bis ex c. d. l. d. t. in. d. actio | |
| 15. edicto | edictum | | | |
| 16. Gregorianus libro IIII sub titulo de de- posito | (<i>de omitted in index</i>) | } idem | idem | |
| 17. Imp. Alex- ander A. Mestrio militi. incurso la- tronum | | missorio m. incisso l. | } <i>omitted</i> incurso l. | (<i>militi omitted</i>) <i>Just. C., Hus</i>) si incurso (<i>Just. C.</i>) latronum uel alio fortuito casu (<i>Just. C.</i>) |
| 18. deposita interfectum ab eis perierunt | inter prefectum | exposita | exposita perierint | ab eis <i>omitted</i> (<i>Just. C.</i>) |
| 19. heredes dolum tan- tum | | | | heredem (<i>Just. C.</i>) dolum solum et latam culpam si non aliud specialiter conuenit (<i>Just. C.</i>) |
| 20. debuit pertinet praetextu commissi | debunt ex pretexto | potuit ex pretexto | ex pretexto | praetextu (<i>Just. C.</i>) commissi uel alterius fortuiti casus. (<i>Just. C.</i>) |
| 21. quae potestate heredis sunt | quae heredi sunt | quem potestatem | quem potestatem heredi | sunt uel quas dolo desiit possidere (<i>Just. C.</i>) |
| 21. restituuntur | restituuntur | | | |
| 22. [ad] exhibendum | <i>omitted</i> (<i>a</i>) exhibendo | <i>omitted</i> | <i>omitted</i> | ad (<i>Just. C., Pith.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|----------------------|------------------------|---|
| PAGE 108— <i>cont</i> | | | | |
| 22. et | <i>omitted</i> | } <i>omitted</i> | <i>omitted</i> | etiam (<i>Just. C.</i>) |
| 23. Prop. VII Kal. Iul. Maximo bis et Urbano conss. | prop. VII d kl iul. maximiano bis et urbano cc. | | | pp. iiii id. iul. maximo et urbano cons. (<i>Just. C.</i>) |
| 24. Paulus libro responsorum v. sub titulo | P. liber r. v. s. t. | } <i>omitted</i> | <i>omitted</i> | |
| 26. antoninus Agrippino | agripino | | | agripino |
| PAGE 110. | | | | |
| 1. uis effracturae praestare | sui efracture | sui | sui (a) efferacture | effracturam (<i>Just. C.</i>) conductor praestare (<i>Just. C., Hus.</i>) |
| 2. si quid ex depositis | expositis | si quis expositis | si quis expositis | ex depositis (<i>Just. C.</i>) |
| 3. extrinsecus horreis | horrei | | | extrinsecus (<i>after quid in previous line, Just. C.</i>) |
| perit depositorum | <i>omitted</i> | perit | perit | perierit (<i>Just. C.</i>) depositorum rerum (<i>Just. C.</i>) |
| sarciri | | | sarcire | |
| 4. Prop IIII non. Nou. Anto- nino IIII cons. Paulus respondit | prop. iiii non nou antonino iii cons ¹ paulus R. | } <i>omitted</i> | <i>omitted</i> | pp. prid. non. ian. anto- nino a. iiii et balbino conss. (<i>Just. C.</i>), prop. A IV (et Bal- bino) (<i>Blume, Hus.</i>) |
| 5. praepositam | | | | propositam |
| 6. inputari posse | * <i>after posse exp</i> titulo de depo- sito unde: incip. | imputare | | imputari (<i>Hus.</i>) * <i>Lach. correctly turns unde incip into undecimus</i> |
| 10. inuolauerit aut | | embolauerit et | | |
| 11. uendiderit uitulos restituut uitulo uno | uindederit uitulus restituere uitulum unum | restituut | restituut | restituut (<i>Hus.</i>) |
| 12. oue una | | ouem unam | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|--|---|---|
| PAGE 110— <i>cont.</i> | | | | |
| 12. uenundetur | | | uenundatur | |
| 14. Paulus libro sententiarum V sub titulo de abactori- bus | Paulus liber sententiarum sub titulo de abgeatoribus | } <i>omitted</i> de abactoribus | paulus libro sententiarum v. sub titulo de actoribus | abigeatoribus (<i>Hus.</i>) |
| 15. plerum que | | | | |
| 16. dantur | | pecorumque | datur | |
| 18. abigunt ferro aut | habigunt a ferro | reabigunt a ferro | a ferro | aut si ferro (<i>Blume</i>), ferro aut (<i>Hus.</i>) |
| conducta manu | | conductam ma num | | |
| 20. abactores sunt qui uel duas | abegatores sunt | (abactores sunt <i>erased</i>) <i>omitted</i> | (abactores sunt <i>erased</i>) <i>omitted</i> | abactores sunt (<i>Paul.</i>) duas (<i>Paul.</i>) |
| 21. [oues] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | <i>added by Hus.</i> , <i>omitted in Paul</i> aut porcos (<i>Paul.</i>) |
| porcos abegerint | porcus | abigerit | abigerit | |
| 22. numerum fuerit ablatum in poena | numero inponat | oblatum inponat | numero feri oblatum inponat | in poena (<i>Paul.</i>), poena (<i>Blume</i>). in poenam (<i>Hus.</i>) |
| 23. qualitate eius aut triplum | triplum | qualitatem triplum | eius apud triplum | triplum (<i>Paul.</i>) quadru- plum (<i>Schult.</i> , <i>Hus.</i>) uel (<i>Paul.</i>) |
| aut | | | | |
| 24. datur | | dantur | | |
| 25. domino | | | dominum | |
| PAGE 112. | | | | |
| 1. idem titulo | cet (<i>index</i>) | | item | |
| 2. si ea de litigauerat | | sic a deque | si ex litigauerit | litigat (<i>Paul.</i>) litigabat (<i>Hus.</i>) |
| 3. remittendus conuictus furis | coniunctus (I. P. eodem | remittendus foris | foris | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin | Vienna. | Vercelli. | Other Readings. |
|---|--|--|---------------------------------|---|
| PAGE 112— <i>cont.</i> | | | | |
| 5. Idem Paulus eodem libro et titulo | libro et cet (<i>index</i>) | } <i>omitted</i> | <i>omitted</i> | |
| 6. quodue aliud pecus | | | | |
| abduxerit | | quodue (<i>b.</i> quod uel) aliud pecus adduxerit | | |
| 7. furem magis eum | | non furem eum esse | | |
| abactorem constitui | abegatorem | constitutio | | |
| 8. Paulus libro singulari | (Paulus liber singulare <i>index</i>) | } <i>omitted</i> | | |
| paganorum | (pagaconorum <i>index</i>) | | | |
| abigeis | | (<i>a</i>) abiseis | ambigeis | |
| 10. abigei damnantur | | abysei dampnatur | ambigei | |
| 11. Baeticae rescripsit | beticae et ipsi | betticae | battice | |
| 12. ad forum | (<i>b</i>) furum (<i>a</i>) frum | a | | |
| remittendus | premittendus | premittendus | premittendus | |
| 13. condemnan- dus | condemnandis | | | |
| 14. Ulpianus libro octauo de officio proconsulis | Ulpianus liber (<i>index</i>) | } idem de officio proconsulis | <i>omitted</i> | |
| 14-15. sub titulo de abigeis; | | | | |
| 16. de abigeis puniendis rescripsit concilio | <i>second de omit- ted</i> | de sub titulo abiseis punien- dis | de abigeis puni- endis | |
| 17. Baeticae Abigei cum gladium | beticae | consulio betticae | scripsit betticae abigeis | consilio uetice rescripsit (<i>Digest</i>) |
| 18. solent puniuntur | | quod olantium | solet | |
| 19. frequentius hoc maleficii alioquin et | frequentium | puniantur | | id (<i>Digest</i>) |
| 20. temporarium damnantur | | maleficia loqui nec temporalium | | |
| 21. maximum | maximo | maximo | damnatur maximo | dantur (<i>Digest</i>) maximum (<i>P. Faber</i>) |
| 22. ut ad gladi- um abigei | | aut gladio | ambigei | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli | Other Readings. |
|--|---|-----------------------------------|---|---|
| PAGE 112— <i>cont.</i> | | | | |
| 24. affectus rescriptum | | rescripti | adfertur | adfectus (<i>Hus.</i>) |
| 26. poenam | poena | | paena | |
| 27. differentia | differentiam | | | |
| 28. et eos qui ad ludum | | | et eos qui ad ludum <i>before</i> est autem <i>in</i> <i>previous line</i> | |
| damnantur | | | damnatur | |
| 29. debent | debet | debet | <i>omitted</i> | |
| PAGE 114. | | | | |
| 1. mandatis ludum | damnatis | damnatis ludunt | damnatis | mandatis (<i>Pith</i>) |
| 2. pilleari | | | pillearii | |
| 3. interuallum | interpalam | interpella | interpella | interuallum (<i>Pith.</i> , <i>Lach</i>), interualla (<i>Hus</i>) |
| 4. pilleari rudem in- duere | | | pillari (b) rudem indulgere | rude batuere ((<i>Lach</i>) |
| 5. rescripto | (bel scripto <i>index</i>) | scripto | scripto | |
| 6. parem poenam | | patrem ponam | | |
| 7. idem | item (<i>text</i>) idem (<i>index</i>) | idem | item | |
| libro et titulo qui supra | liber et it (<i>index</i>) | libro et tituli <i>omitted</i> | <i>omitted</i> | |
| 8. hi pastu et | | | <i>omitted</i> et <i>omitted</i> | pascuis uel (<i>Digest</i>) |
| 9. armentis | fermentis | | | uel ex armentis (<i>Hus.</i> <i>with Digest</i>) |
| quodammodo depraedantur abigendi | quod admodo abigei | uepraedantur abigei | quod ammodum abigei | abigendi (<i>Digest cor-</i> <i>rectly</i>). <i>Mommsen</i> <i>reads</i> abigei |
| 10. exercent equos de gregibus | exercentes quas degere | exercentes quas degere | exercentes quas degere | exercentes equos de gre- gibus (<i>Digest</i>) |
| 11. abducentes ceterum si | | adducentes et cetera idem si | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|---|--|--|
| PAGE 114— <i>cont.</i> | | | | |
| 12. equum relic- tum in soli- tudine abduxerit abigeus | equum in soli- tudinem | equum in soli- tudinem adduxit | equum in soli- tudinem abduxit ambigeus | equos in solitudine re- lictos (<i>Digest</i>), equum iu solitudine (<i>Mom.</i>) |
| 13. fur potius et porcum uel capram uerbecem | berbicem | potius fur <i>omitted</i> et capram berbicem | <i>omitted</i> berbicem | porcam (<i>Digest</i>) uerbecem (<i>Mom.</i>), uer- uecem (<i>Digest</i> , <i>Hus.</i>) abduxit (<i>Digest</i>) |
| abducunt | adducunt | adducant | | quam (<i>Digest</i>) |
| 14. ut hi qui abigunt pecti | ut his qui ad abigent | abigent (<i>a</i>) pecti | ambigent | |
| 15. poenam [item] tem- porari | poena item operibus | item operibus | item operibus | temporari (<i>Mom.</i>), item operis (<i>Digest</i>), item (temporarii) operis (<i>Hus.</i>) |
| 16. gladii praestituerit honestiore | presto erit honestiori | gladii grandi presto erit honestiori | prestiterit honestiori | praestituerit (<i>Digest</i>) honestiore (<i>Digest</i>), honestiori (<i>Hus.</i>) |
| 17. hanc poenam aut rele- gandi | hac poena | etiam relegandi | p(o)ena etiam ut relegandi | |
| 18. remouendi ordine Romae tam- en etiam bestiis subici | ordinem R. t. e. b. s. | ordinem R. tam e. b. s. (<i>a</i> . subici <i>omit- ted</i>), (<i>b</i> . abici) | ordinem R. t. e. b. obici ab. uideamus et | mouendi (<i>Digest</i>) ordini (<i>Digest</i>) } <i>omitted in Digest</i> |
| 19. abigeos ui- demus et abigunt inique | ab. uideamus et iniqui | ab. uideamus et | obiciunt | |
| 20. hac poena adficiuntur | | | | bestiis obiciuntur (<i>Digest</i>) |
| 23. dicit exierit | exiuit | di*it | | |
| 24. uel spicas aut aestimationem restituet ille | existimationem | uel ei ille | aut spicas existimationem restituatur | uel (<i>Hus.</i>) |
| 26. Paulus libro sententiarum [quinto] sub titulo | Paulus liber sententiarum sub titulo (<i>sub- dit index</i>) | paulus libro sententiarum sub titulo | } <i>omitted</i> | |

TEXTUAL VARIANTS.

| Line and Word. | Berlio. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|---|--|
| PAGE 114 <i>cont.</i> | | | | |
| 27. casam aut uillam gratia | casa pillam gratiam | cauca (<i>α</i>) au pillam gratiam | | |
| 28. metallum | metallo | | | |
| 29. honestiores insulam | insula | honestiores uero | | |
| 30. furentis incuria ignem agros | fuerint his incuriam agrus | incuriam agri | incuriam ignis | ferente (<i>Paul.</i> , <i>Hus.</i>) |
| 31. si ex eo uinea oliuae fructiferae | et si oliua | et si uineas oliueta fructiferas | et si uineas oliuas | si (<i>Paul.</i>) ex eis (<i>Hus.</i>) uineae (<i>Hus.</i>) oliuae (<i>Paul.</i>) |
| 32. concremen- tur aestimatione sarciatur | extimationem | concrementum | (<i>α</i>) concreman- tur extimationem resarciatur | |
| PAGE 116. | | | | |
| 1. Paulus eo- dem libro et titulo | | } omitted | | |
| 2-3. noxae 3. deditione sarcitur messium per dolum | noxae et editione perdum | nos edictionem mensuum perdunt | nos et edictione perdum | sarciatur (<i>Paul.</i>) per dolum (<i>Paul.</i> , <i>Vesont.</i>) |
| 3-4. uinearum | | | | uel uinearum (<i>Hus.</i>) |
| 4. aut in | | | in | |
| 6. titulo qui supra | | tituli | omitted | |
| 7. incendia si qui causa facile | incendiarii quidquid causam | incendiarii quicquid | omitted quidquid | incendia si qui (<i>Hus.</i>) incendiarii qui quid (<i>Mom.</i>) omitted (<i>Paul.</i>) |
| 9. Ulpianus libro octauo proconsulis [sub titulo] | octauo (<i>omitted</i> <i>in index</i>) et consulis (<i>index</i>) omitted | } omitted omitted | omitted proconsule omitted | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|--|---|--|
| PAGE 116 <i>cont.</i> | | | | |
| 10. naufragis incendiariis | naufragiis Incendiariis | naufragiis Incendiariis | naufragiis Incendiariis | naufragis (<i>Hus.</i>) |
| 11. Incendiariis interdicti iussit | (only once) (a) interdicti | (only once) interdic iussi | (only once) iussi | |
| 12. re uarie puniti ciuitate | uariae (a) ponitionum (b) punctionum | (b) res uarie (a) res uali*ae | restituariae | uarie (<i>Hus.</i>) |
| 13. fecerunt, si humillimo sunt bestiis subici | si in | ueticii subici | si in humili modo subici | fecerint (<i>Digest, Hus.</i>) humiliore (<i>Digest, Hus.</i>) sint (<i>Digest, Hus.</i>) obici (<i>Digest</i>) |
| 14. aliquo gradu fecerunt puniuntur | grado puniri | alico puniri | puniri | fecerint (<i>Digest, Hus.</i>) puniuntur (<i>Digest</i>); puniendi (<i>Blume</i>); puniri (<i>Hus.</i>) <i>Hus. supplies</i> deporta- tionis poena. <i>Mom.</i> <i>leaves blank space.</i> <i>Digest has</i> in insulam deportantur. <i>Cujas has</i> exilio uel deportatione |
| 14-15. aut certe | | | | |
| 15. [deportatio- nis poena] adficiendi | | | | ei (<i>editions</i>) fecerit (<i>Hus.</i>) |
| 16. fecerint | et | et fecerunt | et | <i>Mom. would prefer</i> in causa lata |
| 17. in lata et incauta lasciuiam | | lasciuam | | |
| 18. Paulus libro singulari paganorum | Paulus libro (liber <i>index</i>) singulari paganorum (<i>in- dex</i>), pagano R (<i>text</i>) | } omitted | omitted | |
| 20. causa id admiserint | | ad eam miserint | cause | id admiserint (<i>Blume</i>); admiserint (<i>Hus.</i>) |
| 21. puniantur casu uillam ex inimicitia | puniatur inimicitia | | puniatur casum uilla | |
| 22. fortuita enim remittenda | remittenda | enim fortuita remittendi | in fortuita enim | |
| 23. uicinis | uicini | | uinis | |
| 24. Ulpianus libro xviii ad edictum, sub titulo | ulpianus libro (liber <i>index</i>) xviii (<i>index</i> , omitted in text) ad edic- tum sub titulo | U. l. xviii ab edicto sub tituli | } all omitted, except Ulpi- anus, which is placed after occi- sum esse in line 25 | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings, |
|---|---|--|---|---|
| PAGE 116— <i>cont.</i> | | | | |
| 24. iniuria | iniuriam | iniuriam | iniuriam | |
| 25. occisum cum diceret | (a) occiso cum doceret | cum doceret | cum docere | |
| 26. item si insulam meam adusseris incenderis Aquiliae | insula adusseris | in insula mea aduserit incenderit aquilia | id si insula mea aduseris aquilia | |
| 27. actionem habebo idemque et si uillam | accione idemque (<i>index</i>) itemquae (<i>text</i>) | accione abeo itemquae ex | abeo itemquae et uilla | |
| PAGE 118. | | | | |
| 1. meam insulam exusserit etiam poena | insula exuserit poenam | | mea insula exurerit ex etiam | |
| 2. plectitur | | flectetur | plectetur | |
| 3. item item. (<i>text</i>) insulam exurere | idem (<i>index</i>) insula (<i>index</i>) | idem | item | item omitted in Digest meam exurere (<i>Digest</i>) |
| 4. Aquilia lege uicino | uicini | | aquilie | lege omitted in Digest etiam uicino non minus etiam (<i>Digest</i>) |
| 5. inquilinis ob | | sub | inaquilini sub | inquilinis tenebitur (<i>Digest</i>) |
| 5-6. et ita Labeo libro xv res- ponsorum refert. | | et ita Labeo resp. xv re- ferret | et ita Labeo responsurum v. refert | omitted in Digest et ita L. xv resp. refert (<i>Blume</i>) |
| 7. sed si stipulam incenderis euagatus | incenderit | sed omitted incenderit euacuatus | sed omitted stipula | |
| 8. praedium illud exusserit Aquilie | proelium exuserit aquiliae | aquiliana | illum exurerit | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|--|--|---|
| PAGE 118 -cont. | | | | |
| 9. habeat an in factum quaestio, | quaestio | habet tam in facto quaestiones | in in facto quaestionis | quaestionis (<i>Hus.</i>) |
| 10. sed | sed | et | et | |
| 10-11. et ita Celsus | (et ita celsius | et ita celsius . . . |) de stipula in- cendentis cel- sius | |
| 11. libro xxxvii digestorum scribit ait enim si | <i>index</i>) (degess- torum <i>index</i>) | | | |
| 12. incendentis effugit eum non | fugit <i>omitted</i> | <i>omitted</i> incendentes offugit <i>omitted</i> | <i>omitted</i> effugerit | effugerit (<i>Hus.</i>) |
| 13. exussit | exussit | | exurit | |
| 14. aliud egit processit | aliud legit precessit * | alius legit pr(a)ecessit | aliud legit pr(a)ecessit | * indicated by Mommsen pr(a)cessit in the MSS.; not so in the Berlin Codex |
| 15. sententia et rescripto diui Seueri | sit rescriptum | sententiam scit | sit rescriptum diui seuerit | |
| 16. profiteri [qui] pabuli | profiteri <i>omitted</i> babuli | profiteri <i>omitted</i> | profiteri <i>omitted</i> | <i>omitted</i> (<i>Hus.</i>) qui (<i>Hus., Scal.</i>) |
| 17. culpa seruorum | | culpas eorum | culpam seruorum | |
| Veturiae | uecturiae | beturiae | | |
| Astiliae | | artiliae | | |
| 17-18. euagatus.. | aeuacatus | { <i>omitted</i> | | |
| Aquilaie | | | | |
| 18. noxali | | noxiri | noxalii | |
| 19. actura si iudicium consistere potest | acturas si iudicium cum adire potest | auctoras si iudicium kp. cii idem adhire potest | actoras si iudicium cum adire potest | acturas (<i>Hus.</i>) iudicium consistere po- test (<i>Mom.</i>); he also suggests iudicem tum adire potes. iudicium cum ea edere potes (<i>Hus.</i>) |
| 20. uisa | uisu | uisum | uisum | uisum aquiliam (<i>Blume, Hus.</i>) |
| 21. fornacarius | | | | fornacarius (<i>Digest</i>) forte seruus (<i>Mom.</i>) |
| servusue aedium con- ductoris | quae idem con- ductores | quae eidem con- ductores | quae idem con- ductores | qui idem conductor est (<i>Mom.</i>) <i>omitted</i> in <i>Digest</i> , seruusue aedium conductoris (<i>Hus.</i>) |
| coloniue | | colonia | | coloniue (<i>Hus.</i>), coloni (<i>Mom.</i>) |
| 22. obdormisset | obdormissent | obdormissent | obdormissent | obdormisset (<i>Digest</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|---|--|---|
| PAGE 118— <i>cont.</i> | | | | |
| 22. neratius ex | muneris | munerari | munerari et | neratius (<i>Digest</i>) |
| 23. locato conuentum in elegendis | loca conuentu in legendis | locata in eligendis | locata conuentu neglegendis | in elegendis (<i>Digest</i>) |
| 24. fuit ceterum subiecerit | fuit tenetur ceterorum subierit | ceterorum | ceterorum | ceterum (<i>Digest</i>) |
| 25. [an] tenetur namque non | tenetur | tenetur | tenetur | an tenebitur qui sub- iecerit (<i>Digest</i>) nam (<i>Digest, Hus.</i>) <i>omitted in Digest</i> |
| 26. nihil qui | si nihil hic qu(a)e | nihil qu(a)e | si nihil qui | nihil (<i>Digest</i>) qui (<i>Digest</i>) |
| 26-28. quem ad- modum si hominem <i>till</i> cessat | | si hominem (<i>omitted</i>) | | quem . . . cessat (<i>omitted in Digest</i>) |
| 28-29. et hic puto ad exem- plum aquil- iae dandam actionem | | et h. p. ad. ex- emplo a. dan- dam actionem | | puto utilem competere actionem (<i>Digest</i>) |
| 29. tam in ad | tamen <i>omitted</i> | tamen <i>omitted</i> | tamen | tam in (<i>Digest</i>) |
| 30-31. obdormiuit uel neglegen- ter custodit, quam in me- dicum qui neglegenter curauit, siue homo periit siue debili- tatus est | obordimiuit (c. q. i. m. q. neglegenter <i>omitted</i>) | obdormit et <i>instead of</i> quam | obdormit et <i>instead of</i> quam | } quam in eum, qui neglegenter custodit (<i>Digest</i>) |
| | | | | |
| PAGE 120. | | | | |
| 1. nec eo obdormiuit humanam | ne (b.) humana | obdormiit humaria | ne eum obdormiit | |
| 2. uel ita | | | uelit | |
| 3. ut non eua- garetur | u. n. euacaret | u. n. euaderet | u. n. euacaret | ne euagetur (<i>Digest</i>) |
| 3-4. item libro vi ex Vibiano relatum est | item (idem <i>in- dex</i>) l vi. ex uiuiano rele- gatum est | item libro ui ex uiuiano rele- gatum est | } <i>omitted</i> | <i>omitted (Digest)</i> |
| 4. furnum | fornum | fornum | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---------------------------------------|--|--|--|
| PAGE 120— <i>cont.</i> | | | | |
| 5. iniuria teneris et ait [Pro- culus] agi non posse Aquila lege quia | et agit non pos- set id. | iniuriam teneres et aut agi (a ^a i) non posse id | iniuriae et ait agi non possem id | tenearis (<i>Digest</i>) et . posse (<i>Digest</i>) et posse tecum (<i>Hus.</i>) aquilia lege (<i>omitted in Digest</i>) |
| 6. et aequius putat | <i>omitted</i> aequium | aequum | aequium | aequius (<i>Digest</i>), aequum (<i>Hus.</i>) puto (<i>Digest</i>) |
| 7. sed non pro- ponit exus- tum parie- tem | | | | scilicet si paries exustus sit (<i>Digest</i>) |
| 7 8. sane enim quaeri potest | | | | } sin autem (<i>Digest</i>) sed (<i>Digest</i> , <i>Hus.</i>) |
| 8. [si] dederis et | <i>omitted</i> dederit | <i>omitted</i> | <i>omitted</i> | |
| 9. habeas metuam mihi des an | habeat motuam de te | <i>omitted</i> de te | de te | damnum des (<i>Digest</i>), detur (<i>Hus.</i>) |
| 9-11. aequum <i>till</i> dixerit | | | | <i>omitted in Digest</i> |
| 9. interim actionem | inter | inter actionum | inter | interim (<i>Pith.</i>) |
| 10. id est inpetrare fortassis | idem imperare (<i>index</i>) | idem fortasses | idem | id est (<i>Pith.</i>), <i>omitted</i> by <i>Hus.</i> |
| 11. non facti | | | | infecti puto (<i>Digest</i>) |
| 12. qui exusserint libro x Urseiis refert | quis exuserit | quis excusserint urbis eius | quis exurerit <i>omitted</i> urbis eius refere | |
| 13. Sabinum lege Aquila | sauinum | sauinum legem aquiliam | | |
| 14. noxali conuenien- dum locato | nox ab tolcato | noxiali inueniendum togato | togato | |
| 15. negat autem respondit uillam | R | debet <i>omitted</i> illam | | <i>omitted in Digest</i> ait (<i>Digest</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|---|-----------------------------------|---|
| PAGE 120— <i>cont.</i> | | | | |
| 16. exusserint locato uel lege teneri | exuserint lege <i>omitted</i> | exuererint tenere | exurerit locatum tenere | exussissent (<i>Digest</i>) uel ex lege (<i>Digest</i>) |
| 17. seruos posset dedere esset | seruus posset dederit | seruum posse <i>omitted</i> | seruum posset | possit seruos (<i>or</i> seruum) (<i>Digest</i>) |
| 18. altero agendum item Celsus | (<i>a.</i>) agendo idem (<i>index</i>) celsius (<i>index</i>) | alterum idem celsius | idem | |
| 19. digestorum scribit apes aduolassent | degestorum (<i>index</i>) | degestorum <i>omitted</i> reuolassent | scripsit | |
| 19-20. tu eas | totas | et totas | totas | tu eas (<i>Digest</i>) |
| 20. exusseris quosdam ne- gare competere legis Aquil- iaea actionem | exuserit | eiusserint quosdam necare competere aquil- iae legis ac- tionem | et iusserit quodamni negari | } <i>Digest has instead</i> legis aquiliae ac- tionem competere |
| 21. inter quos et proculum | | inter quos et pro- culus | | |
| 22. falsum esse Celsus ait reuenire soleant fructui | | | | |
| | euenire | celsius est eueniri solent | euenire fructum | |
| 23. mihi sint eo mouetur | missi sunt | sunt commouetur | sunt eum mouetur | |
| 23-24. ita clausae | | | ita cluse | cista clausae (<i>Hus.</i>) |
| 24. fuerint Celsus | <i>after</i> fuerint, hđ. (= hic deest) | (<i>b.</i>) celsius (<i>a.</i>) cels *** | celsius | |
| 25. manum | manu | manu | | |
| 28. dicit | | dixit | | |
| 29. transmouebis terminos quos constituerunt | | transibis termi- num posuerunt | quam statuerunt | |
| constituerunt | constituerunt | | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|---|---|
| PAGE 120— <i>cont.</i> 30. uel | | <i>after uel quem constituerunt inserted</i> | | |
| PAGE 122. 1-2. Paulus libro sent.[primo] sub titulo finium re- gendorum | P. liber sent. (primo <i>omit- ted</i>) | (primo <i>omitted</i>) (titulo <i>omitted</i>) regendorum | (primo <i>omitted</i>) regendorum | |
| 3. eum per terminos deiecit amouit | <i>omitted</i> terminus | eis <i>omitted</i> terminum deiecitxt ² mouit | eis <i>omitted</i> terminus | per (<i>Paul.</i>) |
| 4. anima aduer- titur | | animaduertit | animaduertatur | animaduertitur (<i>Hus.</i>) |
| 5. Ulpianus libro octauo | U. liber (<i>index</i>), octauo (<i>index</i>) VIII (<i>text</i>) | } <i>omitted</i> | } <i>omitted</i> | IX (<i>Hus.</i>) |
| 5-6. de officio pro- consulis sub titulo de ter- mino moto | de o. p. s. t. de terminio m. | | | |
| 7. eos terminos mouerunt inpune debere | terminus | terminum amouerunt impoenae debent | de eo terminum | terminum (<i>Hus.</i>) |
| 8. k. Sept. se consule | ktr. septembri- arum | (a.) klr. septem- briarum (b.) kl. decb. et sept. <i>omitted</i> consuli | klr. septembri- arum re consul | |
| 9. rescripsit quo statuit rescripti | rescripta | rescripsi que statui | rescripsi quod | |
| 10. se pessimum factum finium | sed | finiunt | | quin pessimum factum (<i>Digest</i>) |
| 11. causa positos abstulerunt dubitari | causam | causas | posito abstulerint dubita | propulerunt (<i>Digest</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|------------------------------------|--|--|---|
| PAGE 122— <i>cont</i> | | | | |
| 11. poenae tamen | poenae eam | poenae eam | poenae ea | poenae autem (<i>Hus.</i>) |
| 12. modus ex condicione facientis magis statui | magistratui | modo se conditionem facientes magistratui | modos ex facientes magistratui | de poena tamen (<i>Digest</i>) |
| 13. potest nam si | poenam | poenam | poenam uariam statuit uerba rescripti re- peated before si | magis statui potest nam (<i>Digest</i>) |
| sunt personae | | | | personae sunt (<i>Digest</i>) |
| 14. non dubito quin occupandorum aliorum causa admiserint | con dubito quin (a) aliurum | non dubito quis causam amiserint | non dubito qui non cubandorum causam admiserunt | non dubito quin (<i>Mom.</i>) non dubie (<i>Digest</i>) alienorum (<i>Digest</i>) admiserunt (<i>Digest</i>) |
| 15. in cuiusque pa- titur aetas relegari | omitted cuiusque cum patitur | cuiusque com patitur eptas relegaris | cuiuscumque patitur et | cuiusque patitur (<i>Digest</i>) |
| 15-17. id est... castigari | omitted | omitted | omitted | id est...-castigari <i>sup- plied from Digest</i> |
| 17-18. et sic... dari | | | | et ad opus biennio dari (<i>Digest</i>) |
| 18. si aut | | omitted | nisi | |
| 18-19. fortuito | fortuito | fortuito | | |
| 19. usus causa sufficit coerceri | uisus causa quoherceri | uisus causa cohercerent | uis causa | usus causa (<i>Pith.</i>); omitted in <i>Digest</i> sufficiet (<i>Digest</i>) decidere (<i>Digest</i>) |
| 22. quemquam Israhel | | quemqua israhelitam | | |
| 23. uendiderit morte moriatur | uindederit | mortem moriatur | After moriatur is inserted interpretatio plagiarius (<i>sic</i>) est qui homi- nem liberum rapit et uendit | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|----------------------------------|--|--|
| PAGE 122— <i>cont.</i> | | | | |
| 24. Paulus libro titulo Fabiam | liber fabiani | idem paulus tituli | | |
| 25. Lege Fabia Romanum ingenuum | id manum ingenuus | <i>omitted</i> | <i>omitted</i> id manum ingenuus | |
| 25-26. liberti- numue | libertinum | libertinum | libertinum | libertinumue (<i>Mom.</i>) libertinum (<i>Hus.</i>) |
| seruumue alienum | | seruum uel | seruum uel alium | |
| 26-27. compara- uerit | | comparatierit | | |
| 27. poena nummaria | summaria | penam summaria | penam summaria | nummaria (<i>Cujas</i>) |
| 28. translata praefectum itemque | tranlata pr(a)efecto idemque (<i>index</i>) | pr(a)efecto | pr(a)efecto | praefectos (<i>Hus.</i>) |
| PAGE 124. | | | | |
| 1. ordinem animadu- sionem | ani Inaduer- sionem | | ordine animaduersione | |
| 2. aut metallum dantur crucem | ut damnentur | metallo | cruce | |
| 2-3. honestiores | honestiorem | | | |
| 3. adempta dimidia parte | dimidiam partem | adepti dimidiam partem | ademptum dimidiam partem | |
| in perpe- tuum | impp. | | | |
| relegantur | | (a) redigantur (b) redigantur | | |
| 4. domino | dno (<i>text</i>) dominium (<i>index</i>) | | | |
| alienum seruum subtraxerit | <i>omitted in index</i> seruus (<i>index</i>) | subtraxerit | | |
| 5. in domino | an | | dominium | |
| 6. datur | | dampnatur | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--------------------------------------|---|---|---|
| PAGE 124 -cont. | | | | |
| 7. Ulpianus libro nono | Ul. l. viiii sub titulo | | <i>omitted: after fabiam, ulpian- us is inserted (sub titulo omit- ted) de off. proconsulis</i> | Ulp. libro IV. (<i>Hus.</i>) |
| de officio pro- consulis. sub titulo | de off. procon- sule | subtituli de off. proconsulis | legem | |
| 9. legis Fabiae cognitio in | | legem fabiam conditio | | |
| 10. quamquam quidam Caesaris | cesari | <i>omitted</i> tamquam quidum cessari | quidum cesari | quamquam eam (<i>Hus</i>) |
| 11. tam in pro- vinciis quam Romae iam | quam romae tam in provin- ciis | quam romae tam in provin- ciis an | quam romae etiam in pro- vinciis | tam in provinciis quam Romae (<i>Mom.</i>), quum Romae tum in provin- ciis (<i>Hus.</i>) |
| 12-13. super ea re | superare | super ea | | |
| 13-14. iniuria commissa | in uia | iu uia | in uia | iniuria (<i>Pith.</i>), in Fabiam commissum (<i>Hus.</i>) |
| 14. praefectorum | | praefectorem | | |
| 15. cognitio | | | | <i>After cognitio Hus. supplies [in Italia, provinciis (Hus.) enim est (Blume, Hus)</i> |
| prouincia est nec | prouintiam enim | prouintiam enim | enim (a.) <i>omitted</i> | |
| 16. procuratori caesaris iniungitur quam si praesidis | iniunguntur quam | percuratori necessariis (<i>sic</i>) iungitur quas praesidias | } procuratoriis | quam si (<i>Cujas</i>) |
| 17. plane Fabia | plenae | fabiam | flabiam | |
| 18. partes huiusce rei attamen | parte huiuscertae adtamen | (a) huiusce rei tamen (b) hu- iuscemodi ta- men | parte huiusce rei et tamen | huiusce rei attamen (<i>Mom.</i>) Uice praesidis tamen (<i>Hus</i>) |
| 19. procurator nullam | procuratori illam | procuratori illam | procuratori illam | nullam (<i>Mom.</i>), illam (<i>Hus.</i>) |
| 20. cognoscere tamen ut Fabia | fabiam | cognoscerent adtamen fabiam | | cognoscere nequeat (<i>Hus.</i>) |
| 21. imp. Antoni- nus consti- tuit | | idem imp. Anto- ninus consti- tuit (<i>begin- ning a new chapter</i>) | <i>omitted</i> | |
| idem legis Iuliae | | iuriae (<i>omitting idem legis</i>) | item (<i>omitting legis iuliae</i>) | item (<i>Hus</i>) |
| 22. adulteris constitutione | alteris | | constitu ² tionem | |

TEXTUAL VARIANTS.

| Line and Weid. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|--|---|
| PAGE 124 -cont. | | | | |
| 22-23. quaestio- nem accepit | questionem accipit | questi nomen accepi | | |
| 23. lege autem Fabia | | legem autem phariam | | |
| 24. eumue sit celauerit | eundemque | eundemque qui (a) celarierit | eiusdemque | eumue (<i>Pithou</i>), eum denique (<i>Hus.</i>) |
| 24-25. uinxerit uinctumue habuerit | uinxerit uinc- tumque habu- erit | et habuerit uinc- xerit uinctum | uinxerit uinc- tumque habu- erit | uinxerit uinctumque habuerit (<i>Hus.</i>) |
| 25. quue eam | | | qui uel ea | |
| 26. primo poena iniungitur | poenam | pro modo poenam ingungitur | | after iniungitur <i>Huschke</i> inserts sestertium c. miliu |
| 27. quis | qui | qui | qui | quis (<i>Pauw</i>); <i>Cujas</i> delctes. |
| sestertis | sextertiis | rex certis | | sestertium (<i>Hus.</i>) |
| PAGE 126. | | | | |
| 1 milibus punietur capite se- cundo qui | militibus punietur capite secundum | punietur secundo capite idem qui (<i>begin- ning a new chapter</i>) a domino | punietur | |
| 3. seruam uendiderit | (a.) uendidedrit | | seruo | |
| 4. populo sestertia | populus extertiam | populo sestertia dari est tamen | populos extertiam | sestertium (<i>Hus.</i>) |
| 5. dare | | | | |
| 6. tamen est capitali | capitulis capitalis | | capitulis | |
| 7. sententia plagiatores atrocitate puniendos | | sententiam placiatores atrocitatem puniend (= puniendum) | atrocitatem | |
| 8. metalli | metalli poenam | metalli poenam | metalli poenam | |
| 9. reis inrogauerit | eis inrogauit | (a.) rei | | |
| 13. inueniatur in te | | omitted ne | | <i>Mom. suggests that it should be inuenietur</i> |
| 14. nec apud tollas consentias | apud tollat consentiat | | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|-----------------|---|
| PAGE 126— <i>cont.</i> | | | | |
| 14. uenenariis | uenerariis | | uenenarias | |
| 15. qui dicunt | | qui dicunt <i>repeated</i> | | |
| quid | | qui | | |
| conceptum | coseptum | | | |
| habeat | | habet | habet | |
| mulier | mulieri | mulieri | mulieri | |
| 16. intendas | | | | attendas (<i>Hus.</i>) |
| 17-20. [non inue- niatur inspiciens] | | | | <i>This is another version of the preceding; and accordingly an inter- polation</i> |
| 17. auguriator | auguriatur | (<i>a.</i>) augoriator (<i>b.</i>) augurator? | augoriator | augurator (<i>Hus.</i>) |
| nec | | uel | | |
| 18. pythonem | pitonem | phytonem | pitonem | |
| habens | habentem | | | |
| in uentrem | | <i>omitted</i> | | in uentre (<i>Hus.</i>) |
| 19. nec | | | <i>omitted</i> | |
| haruspex | caruspex | | | aruspex (<i>Hus.</i>) |
| 19.-20. inspiciens | | | inspices | |
| 21. qui | | | quid | |
| propter | | pro | | |
| enim | | | <i>omitted</i> | |
| abominationes. | | | obominationes | |
| 21-22. deus eradi- cabit | dē eradicauit | denses abdicant | denses abdicant | deus eradicauit (<i>Hus.</i>) |
| 22. Chaldaeos | caldeos | chaldeos | chaldeos | chananaeos (<i>Hus.</i>) |
| a facie tua | a facie sua | ad faciem tuam | a facie sua | |
| 23. possides | | | possidebis | possidebis (<i>Hus.</i>) |
| 24. auguria | uuguria (<i>sic</i>) | | | |
| PAGE 128. | | | | |
| 1. ulpianus | ulpianus libro | idem | | |
| libro VII | (liber <i>index</i>) VII | de . . . tituli | <i>omitted</i> | |
| de off. pr. | | | | |
| sub titulo | | | | |
| 3. interdictum | interdictos | | | interdicta (<i>Hus.</i>) |
| callida | | callidam | | |
| 4. obstinata | obstinacitate | obstinatam | obstinata per- | opinatae artis (<i>Hus.</i>) |
| persuasione | (<i>a.</i> obstanacitate) persuasio | (<i>a.</i> opinatam) persuasionem | suasione | persuasio |
| nec | | quo | | |
| interdici eis | | interdicte his | interdicit eis | |
| 5. sed uetus | | seductus | seductos | |
| est | | haec | | |
| 6. Pomponio et | P. et r. consules | pomponi et rufo | | |
| Rufo cons. | (<i>text</i>), pom- penio et ruffo consule(<i>index</i>) | consulibus | <i>omitted</i> | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---|--|---|
| PAGE 128 <i>cont.</i> | | | | |
| 6. cauetur ut | canetur | canetur et | | |
| 7. Chaldaeis simile incep- tum fecerunt | caldeis similem incertum | chaldeis similem incertum | chaldeis similem incertum | } simile inceptum fecer- int (<i>Hus</i>) |
| 8. interdicatur eorum | interdicantur erum | | | |
| 8-9. si externa- rum gentium quis id fecerit | sic eternus gen- tium qui si id fecerit | sicexternasgen- tium qui si id fecerint | sic externus gen- tium qui si id fecerint | |
| 10. quaesitum scientia huiusmodi | quesito | scientiam huiusmohi | quesito | |
| 11. [et] ueteres | <i>omitted</i> | <i>omitted</i> tere | <i>omitted</i> | |
| 13. uariatum nec dissimu- landum inrepsisse | uariatum nam | uarietur nam (<i>a</i>) dissimulatum | uaritur nam | nec (<i>Oiselius</i>) |
| 14. sepraeberent | reprehenderent | repraeberent | repraeberent | |
| 15. quidem contumaciam | contomaciam | si quidem | si quidem | |
| 16. uisi | | | | ausi (<i>Pith.</i>) |
| 16-17. consulere uel exercere quam quod fuerat per- missum sae- pissime | consulere uel exercere quam qui fuerant p. s. | } <i>omitted</i> | consulere uel exercere (<i>a</i> . er- cere) quam qui fuerat p. s. | |
| 17. omnibus | hominibus | | | |
| 18. ineptiis se inmisceret | inmiscerent | inicerent | inneptiis se <i>omitted</i> (<i>a</i>) inmiserent | immisceret (<i>Hus</i>) |
| 19. puniti ii qui id exercuerint mensura scilicet | punit hii quid exercuerunt scilicet et | id quid mensuram | poniti hi | hi (<i>Hus.</i>) exercuerunt (<i>Hus.</i>) |
| 20. qui de salute | | quidem solute | quidem solute | salute (consuluere <i>added</i> by <i>Hus.</i>) |
| 21. qua alia | qualia | qui alia | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|------------------------|--|--|-------------------------|---|
| PAGE 128— <i>cont.</i> | | | | |
| 21 enim qui de sua | quidem | ens quidem uario- | quidem suaro- | qui de sua suorumque |
| 21-22. suorumque | suasorumque | rumque | rumque | (<i>Iac. Gothofred</i>) |
| 22. habentur | | | habenter | qui habentur (<i>Hus.</i>) |
| 22 23. uaticinat- | quam uatici- | quam <i>the rest</i> <i>omitted</i> | quam (<i>a.</i> beati- | uaticinatores quam- |
| ores, quam | natores hii | | cinatores) (<i>b</i> | quam ii quoque plec- |
| quam ii quo- | quoque plec- | | tendentes) (<i>b</i> | tendi sunt quoniam |
| que plecten- | tendi sunt | | hi quoque | nonnumquam (<i>Mom.</i>), |
| disunt, quo- | qm nonnum- | | plectendi sunt | u. hi quoque p. s. qu. |
| niam non- | quam | | quoniam non | nonnumquam (<i>Hus.</i>) |
| numquam | | | umquam | |
| 24 quietem | (<i>a</i>) quaetem | | | |
| 25. denique | | | enimque | |
| decretum | | digestus | decertum | |
| diui Pii | | idem | | |
| Pacatum | pacatum (<i>text</i>) pactum (<i>in-</i> <i>dex</i>) | pactum | pactum | |
| 26. Lugudunen- | lugdunensis | (<i>a</i>) lugdunensis | lucudinensis | lugdunensis (<i>Hus</i>) |
| sis | | (<i>b</i>) lugdonensis | | |
| rescripti | | rescripto | rescripto | |
| 27. subieci | subiecit | | subiecit | |
| denique | | | | denique et (<i>Hus.</i>) |
| 28. Cassiano | | cassiano | casiano | |
| uaticinatus | | betiginatus | beatiginatus | |
| instinctu | extinctum | extinctu | extinctum | |
| 29 insulam | insula | | inpuni | |
| inpune | | | | |
| 30. homines | hominis | | | |
| obtentu | obtentum | obtentum | obtentum | |
| ex monitu | et monitu | et monitum | et monitu | ex monitu (<i>Mom.</i>); monituum (<i>Lenel</i> , <i>Palingenesis</i> , <i>Ulpianus</i> fr. 2192), (<i>Hus.</i>) |
| 31. enuntiant | renuntiant | | | |
| configunt | eos fingunt, (<i>ad-</i> <i>dition on mar-</i> <i>gin by a later</i> <i>hand</i> <i>confin-</i> <i>gunt on</i> <i>Mommsen's</i> <i>authority, un-</i> <i>decipherable</i> <i>in MS.</i>) | eos fingunt | eos fingunt | eos fingunt (<i>Hus.</i>) |
| PAGE 130. | | | | |
| 1. Gregorianus | Gregorianus | } <i>omitted</i> | Gregorianus | G. I. xiii (<i>Hus.</i>) |
| libro vii. | liber vii | | libro vi | |
| sub titulo de | de maleficis et | de maleficis et | de maleficis et | |
| maleficis et | manichaeis sub | manichaeis | manichaeis | |
| 1-2. manichaeis | titulo | (sub titulo <i>omitted</i> .) | sub titulo | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|--|---|
| PAGE 130— <i>cont.</i> | | | | |
| 3. Impp. Diocletianus et maximianus AA. [et Constantius] et | comp maximus dioclicianus et maximianus nouelissimi aa | imperatoribus maximianus diocletianus et maximinus nobilissimi aaa | impp maximianus diocletianus et maximus nobilissimi aaa | impp. Max., Dioc. et maximinus nobilissimi AAA. Iuliano (<i>Hus</i>) |
| 4. maximianus nobilissimi [CC] proconsuli otia | proconsule | | etiam | |
| 5. incommodioris | in communionem | in communionem | in communionem | incommodioris (<i>Hus.</i>) in communione (<i>Mom.</i>) |
| 6. humane modum | hominem | modo | | |
| 7. ac superstitionis ut | hac | | | superstitiosis (<i>Hus.</i>) |
| 9. sed dii immortales ordinare et | et sedi immortale ornare | redde immortalis ornare <i>omitted</i> | et redde | |
| 10. dignati ut | et | dignitati et | et | ut (<i>Cujas</i>) |
| 11. et egregiorum uirorum | | egregiorum | egregiorum | uirorum [ore] (<i>Hus.</i>) |
| 12. inlibata statuerentur obuam | | in inlibata | statuarentur ouiam | |
| 14. debere retractare | debere sed tractare | debere | debere | debet (<i>Hus.</i>) |
| 14-15. ab antiquis | | | | ab antiquitate (<i>Hus.</i>) |
| 15. statuta suum cursum | tractata sunt crusum | sunt | sunt crusum (<i>a.</i>) ingens enim | suum (<i>Pithou</i>) |
| 17. ingens | | | | |
| 18. et sectas ueterioribus ut | ex rectas deterioribus | ueteribus | rectas ueteribus idem ut (<i>beginning a new chapter</i>) per | ueteribus (<i>Hus.</i>) ueterioribus (<i>Cujas</i>) ui (<i>Hus</i>) |
| 19. pro prauo excludant diuinitus | prauum diuinitas | | | excludunt (<i>Hus.</i>) |
| 19 20. quondam | quoniam | quoniam | quoniam | quondam (<i>Cujas</i>) |
| 21. manichaei audiuius ueluti [et] | manicheus audiuius uelut <i>omitted</i> | manicheos audimus | manicheus audimus | manichaeos (<i>Hus.</i>); manichaei (<i>Mom.</i>) |
| 22. Persica | | | perfida | et added by <i>Mom.</i> ; [<i>Hus.</i> adds ac |
| 23. committere populos | populus | committeret populus | populus | |
| 24. perturbare | perturbaret | | | |
| 25. inserere adsolet | | (<i>a.</i>) solent (<i>b.</i>) asolent | | inferre (<i>Pith</i> , <i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|-----------------------|---|-----------------------------|--|
| PAGE 130— <i>cont.</i> | | | | |
| 26. accedenti conentur [per] execrandas consuetu- dines | accendenti | conueniatur et grande consuetudinem | conuentur et grandes | per added by Pith (execranda consuetu- dine et scaeu lege (Hus.) |
| 26-27. et scaeuas leges | et istebas | et seuas | et issceuas | |
| 27. innocentioris | | innocentiores | | |
| 27 28. Romanam gentem | romana gente | | | |
| 28-29. uniuersum orbem nos- trum | | uniuersam ur- bem nostram | | |
| 29. de suis ma- liuolis inficere et | infigere | infigere hec | infigere | de deleted by Pith., in- ficere (Cujas), arguis maliuoli inficere (Hus.) |
| 30. prudentia tua relatione | relationem | relationem | prudentiam tuam | |
| 31. statutis | | statutum | statuti | statuis (Lach), statuunt (Hus) |
| euidentiissime sunt | euidentissi- morum | euidentissi- morum | euidentissi- morum | euidentiissime sunt (Mom), euidentissi- morum (Hus.) |
| exquisita et inuenta | et ad inuenta | acquisita et inuenta | adquisita | inuenta (ac) (Hus) |
| 32. aerumnas illis | eorum maenas illi | illas | illi | illis (Schult) |
| PAGE 132. | | | | |
| 1. ac | ad | | | |
| 2. poenae ita ut | poena | poena | poena aut | |
| 3. consentaneos adeo | ad eos | ad eos | consentaneus ad eos | consectaneos (Hus.) adeo (Pith), aduersus de (Hus) |
| 4. bona | | nomen a | | |
| 5. qui | quis | quis | quis | |
| 6. maiores personae | maioris | maioris | maioris | maioris (Hus.) |
| [ad]adhuc | adhuc | personam adhuc | ad hunc | ad adhuc (Mom), ad hanc (Hus.) |
| 7. sectam | secutam | secuta | secta | |
| 8. transtulerint | transtulerunt | transtulerunt | transtulerint | |
| 9. facies ipso quoque phaenensi- bus | forensibus | facias ipsi quoque forensibus | ipso quoque forensibus | ipsosque (Hus) phaenensibus (Pith. and Schult) Cf Theodoret Hist. Eccl. 4, 22, de Chris- tianus Alexandrinis. Foenensibus (Hus) proconensibus (Hus) |
| Procon- sensibus | proconensibus | proconensibus | praeconensibus | |
| 10. stirpitus lues | strepitus malis | mali | mali | lues (Mom), mala (Hus)) nequitia de saeculo (Hus) |
| 10-11. nequitiae de saeculo | | nequissi de hoc saeculo | | |
| 12. maturet | maturius | maturius | maturius | maturius (Hus.) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|--|---|
| PAGE 132 <i>cont.</i> | | | | |
| 12. obsecundare dat. prid. k. | | obsecundari | | o. ne cunctetur (<i>Hus.</i>) |
| 13. Alexandriae | | <i>omitted</i> | } <i>omitted</i> | |
| 16. sic | | (<i>a.</i>) <i>omitted</i> | | |
| 17. salfad moysen Eleazarum | salfade moyses eleatarum | salphad (<i>a.</i>) eleanorum | salpadae moyse | salfadae (<i>Hus.</i>) |
| 17-18. sacer- dotem | | sacerdotes | sacerdotes | |
| 18. principes omnemque senatum | principem omnemque senatu | atque omnem | atque omnem | atque omnem (<i>Hus.</i>) |
| 20. deleatur | deleantur | | | |
| 21. de medio tribus suae masculus | de medio tribus sua | de media tribu sua; (<i>a.</i>) et ideo non deleatur no- men patris nos- tri <i>repeated</i> <i>after</i> masculus | de media tribu sua | |
| 22. fratrum patris | patri | fr̄m | | |
| PAGE 134. | | | | |
| 1. petitionem | | | petitiones | |
| coram deo | domino dō | | domino deo | coram deo (<i>Blume</i>) domino deo (<i>Hus.</i>) |
| dominus Moysi | | moysen | <i>omitted</i> moyses | |
| 2. salphad | salpad(a)e | salphiad | salpad(a)e | salfadae (<i>Hus.</i>) |
| 3. medio dices | medium dicimus | | dices | |
| 4. et filium | filius | <i>omitted</i> filium | filius | filios (<i>Hus.</i>) <i>After habuerit much has fallen out from the text. Hus. sup- plies</i> dabitis heredi- tatem eius filiae eius. Si filiam non habuerit, dabitis fratribus eius. Si fratres non habuerit dabitis patruis eius. Si patruos non habue- rit |
| 6. proximo | proximum | | | |
| 7. filiis | filios | | | |
| 8. secundum quae | | sicut | | |
| 9-11. Gaius in- stitutionum libro iii legitimas sic ordinat successiones intestatorum | libro iii insti- tutionū kp. dcccviii gaius institutionū lib iii legiti- massicordinat successione statutorum | libro iii institu- tionum kp. cxxiidemgaius institutionum libro iii legiti- mas sic ordi- nata succes- siones intesta- torum | libro tertio in- stitutionum kp. cxxvi de successione inter fratres gaius | |
| 11. lege | | | | ex lege (<i>Just Inst.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|---|------------------------------------|--|--|
| PAGE 134 <i>cont.</i> | | | | |
| 12. pertinent sui existimantur | si | (b) peruenient si estimantur | si extimantur | |
| 13. morientis fuerunt filiaue nepos | fuerint filia uel nepus | morienti filia uel | fuerint filiaue uel nepus | fuerint (<i>some codices of Just. Inst.</i>) |
| 14. neptisue [ex filio] prone- pos filio nato | neptisue pronepus | omitted uel filio | neptisue proneptus natu | neptisue ex filio prone- pos (<i>Just. Inst.</i>) ex filio (<i>Just. Inst.</i>) |
| 15. prognatus interest [sint] | prognatos interesse omitted | interesse omitted | prognatos interesse omitted | interest utrum (<i>Just. I.</i>) sint (<i>Just. Inst., Hus.</i>) |
| 16. adoptiui nepos neptisue | adoptibi nepus | | nepus neptimue | |
| 16-17. pronepos proneptisue | pronepus pro- nepotesue (a.) pronepote suo | pronepotes pro- neptesuae | pronepus pro- nepteue | |
| 18 [in potestate ... acciderit] | omitted | omitted | omitted | in potestate ... acciderit (<i>Just. Inst.</i>) |
| 19. ratione ueluti | | rationem ueluti emancipationem | | |
| id | idem | idem | idem | id (<i>Just. Inst.</i>) |
| 20. quisque moriatur | | | moriatur | quis (<i>Just. Inst., Hus.</i>) moreretur (<i>Just. Inst.</i>) moritur (<i>Hus.</i>) |
| sit nepos | nepus | sint | sint nepus | |
| 21. non idem et ceteris | idem ex ceterorum | omitted ceteri | | item et (<i>Hus.</i>) |
| liberorum | librorum (<i>index</i>) | | | |
| 22. intellegimus manu | | | manum | intellegemus (<i>Just. Inst.</i>) |
| 22-23. est ei cuius in manu est sua he- res est | eius estis sua heres est | eius est ualere et | eius est in sua heres est | eius, qui moritur est, ei sua heres est (<i>Hus.</i>) est [ei cuius in manu est] sua heres est (<i>Mom.</i>) |
| 23. loco | | in loco | locus | |
| 23-24. item nurus quae in filii manu est | item nurus qu(a)e in filii manus est | omitted | item nurus quae in filii manus est | |
| 24. nam et haec neptis loco est | nec et h(a)ec nep- tis loco est | | nam et haec neptis loco est | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|---|--|
| PAGE 134 <i>cont.</i> | | | | |
| 25. [si] manu sit cum | <i>omitted</i> manus eius dum | <i>omitted</i> manu eius dum | <i>omitted</i> manu eius cum | si (<i>Hus.</i> , <i>Mom.</i>) m. est cum p. moritur |
| 26. pater moritur | p. moritur | p. moritur (b.) morituri | p. morituri | (<i>Hus.</i>) |
| sit idemque dicimus | | idem <i>omitted</i> | sunt idemque | dicemus <i>is required</i> dicemus (<i>Hus.</i>) |
| 27. [in] nepotis manu causa sit quia proneptis | <i>omitted</i> nepotes (<i>index</i>) causa sit quae a proneptis | <i>omitted</i> manum cause ita proneptis | de causa sit quae a proneptis | |
| 28. [qui] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | qui (<i>Just. Inst.</i>) |
| 29. futuri sui | futuris | futuris sibi | futuris sibi | |
| PAGE 136. | | | | |
| 1. nomine Aelia | nomina | nomina helia | nomina | nomine (<i>Pithou</i>) |
| 2. ex senatus consulto | senatum consultum | <i>omitted</i> senatus consultus | senatus consulto | |
| 2-3. [probatur. ...causa] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | probatur causa (<i>Gaius</i>) |
| 4. [quod] et eo filio secundae mancipatione | <i>omitted</i> secundae aemancipationem | <i>omitted</i> officio secundae emancipatione | <i>omitted</i> secundae mancipatione | quod (<i>Gaius</i>), quod etiam (<i>Hus.</i>) etiam (<i>Gaius</i>) secundae (<i>Gaius</i>) mancipatione (<i>Gaius</i>) |
| 5. manumittitur intellegemus | manum mittitur intellegimus | manum mittitur ille legitimus | manum mittitur intellegimus | |
| 6. [igitur] filius nepotes nepotesue | <i>omitted</i> filiis nepotesuae | <i>omitted</i> nepote nepteue | <i>omitted</i> filiis nepotesue nepte | igitur (<i>Gaius</i>) nepotes nepotesue (<i>Gaius</i>) |
| 7. extant gradu propior | existent gradum proprium | existente gradum proprium | existent gradum proprio | extant (<i>Gaius</i>), extent (<i>Hus.</i>) propior (<i>Pith.</i>), pro- ximior (<i>Gaius</i> , <i>Just.</i> <i>Inst.</i> , <i>Hus.</i>) |
| 8. ulteriorem nequum uidetur | ulteriore et quam uidetur | cum uidentur | ulteriore ecum uidetur | aecum (<i>Gaius</i> , <i>Codex</i> <i>Veronense</i>) uidetur (<i>Just. Inst.</i>), uidebatur (<i>Gaius</i> , <i>Codex Veronense</i> , <i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|------------------------------|---|--|
| PAGE 136 <i>cont.</i> | | | | |
| 8. neptesue | | | uenepte | |
| 9. patris sui locum | patri sui loco | | | |
| pari ratione | patri rationem | rationem | | |
| 10. nepos neptisue ex et ex nepote pronepos | nepus (a.) sed ex <i>omitted</i> pronepus | | nepus neptesuae et | |
| 11. uocantur | | | | omnes uocantur ad hereditatem (<i>Gaius</i> <i>Veronese C ; Hus.</i>) |
| 12. quia nepotes neptesue item proneptesue | nepotes nepotes- uae idem (<i>index</i>) | qua nepotis nepote sua | qua | |
| 13. patris esse uisum est | patri <i>omitted</i> | esse uisus est | proneptesue patri esse uisus est | parentis (<i>Gaius, Just.</i>) esse uisum est (<i>Gaius</i>) |
| 14. sed stirpes hereditates | stirpem hereditatis | stirpe hereditatem | et stirpes hereditatis | stirpes (<i>Gaius</i>) hereditates (<i>Gaius</i>), here- ditatem (<i>Just. Inst.,</i> <i>Hus.</i>) |
| diuidi ita | diuidit | diuidi | diuidit | diuidi ita (<i>Gaius</i>), diuid (<i>Just. Inst.</i>) |
| 14-15. dimidiam partem | | | (a.) dimidiam (<i>omitting partem</i>) | partem dimidiam (<i>Gaius</i> <i>Just. Inst., Hus.</i>) |
| 15. ferat [et 16. alteram 16-26 item si ex <i>till</i> mat- rem eandem habuerint | fruat | fuera t aliam | fuera t | ferat et (<i>Gaius</i>) |
| 16. item extent | idem (<i>index</i>) extent | existant et | <i>omitted</i> | extent et (<i>Gaius, Ver-</i> <i>nese, Hus.</i>), extant et (<i>Just. Inst.</i>) duo (<i>Gaius</i>) |
| 17. [duo] tres | <i>omitted</i> ires | <i>omitted</i> | <i>omitted</i> | |
| 17-18. [ad unum <i>till</i> tres aut quattuor] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | ad unam <i>till</i> tres aut quattuor (<i>Gaius</i>) |
| 19. altera dimidia | dimidiam | alteram dimidiam | dimidiam | |
| 20. De agnatis | | | | de agnatis (<i>omitted in</i> <i>Gaius</i>) |
| 21. ex lege | et | et ex legem | | |
| 22. legitima cognitione iuncti | | legitimam cognitionem | | |
| | uincti | | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|---|--|
| PAGE 136— <i>cont.</i> | | | | |
| 23. est per uirilis sexus personas | hoc est uirili sexu persona | hoc est ex uirili sexu personae | hoc est uirilu sexu | est ea (<i>Gaius</i>), haec est (<i>Hus.</i>) persona (<i>Gaius</i> , <i>Veronese</i>) |
| 24. coniungitur [qui] | <i>omitted</i> | coniunguntur <i>omitted</i> | <i>omitted</i> | <i>omitted in Just. Inst.</i> III, 2, 1; <i>who also</i> <i>omits the first sunt in</i> <i>the line. In Gaius</i> <i>the passage (III. 10) is</i> <i>defective.</i> |
| 25. patre sunt sibi an | pater uisi | sunt <i>omitted</i> uisi | uisi | sibi (<i>Just. Inst.</i>) an etiam (<i>Hus.</i>) |
| 26. matrem eandem | matre eadem | matre eadem | matre eadem | |
| 27. habuerint item fratris inuicem is | idem (<i>index</i>) inuice his | habuerunt patris | | |
| 28. eodem fratres patruelis | | eorum patruelis | fratris patruelis | |
| 29. quos plerique etiam conso- brinos | quos plerique etiam conso- brinos | | <i>omitted</i> | |
| 30. ratione ad gradus agnationis | agnitionis | rationem et gradus agnitionis | agnitionis | agnationis (<i>Gaius</i>) |
| 31. poterimus simul | potuerimus | | praeterimus <i>omitted</i> | |
| 32. tum cum | tunc | tunc | tunc | tum cum (<i>Gaius</i>), tunc cum (<i>Hus.</i>) |
| 33. intestatum | intestato | intestato | intestato | intestatum (<i>Gaius</i> , <i>Just. Inst.</i>) |
| 34. decessisse iure | decessisset | discessisset iuro | decessisset | |
| 34-35. heredita- tem proximi- mus omiserit | heredes proximi- mos omiserit | heredem proximi- mo suo miserit | heredem proximi- mos omiserit | agnatus proximus here- ditaten omiserit (<i>Gaius, Hus.</i>) |
| 35. hereditatem | | | | <i>omitted in Gaius,</i> <i>and (Just. Inst.)</i> |
| 36-37. decesserit quis proximi- mus erit, re- quirimus, sed eo tempore, quo | <i>omitted</i> | et decesserit | | fuerit <i>instead of</i> erit <i>is</i> <i>required (Mom.)</i> fuerit (<i>Hus.</i>) |
| 38. aliquem intestatum quia facto | in testamentum quam | in testamentum quam | alique in testamentu quam factum | quia (<i>Gaius</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---|--|--|--------------------------------------|---|
| PAGE 136— <i>cont.</i> | | | | |
| 39. esse uisum est tunc uisus | | <i>omitted</i> ¹ | | u. e. (ex iis qui) tunc (sunt) (<i>Hus.</i>) |
| requiri proximum | | requirit | proximum est | |
| 40. [eo] heredem fore | <i>omitted</i> heredes forte | | <i>omitted</i> heredum forte | eo (<i>Gaius</i>) fore heredem (<i>Gaius</i>) |
| PAGE 138. | | | | |
| 1. quod tamen adinet hoc iure | qui <i>omitted</i> | quedam adinent iuro | quid | quod (<i>Gaius</i>) attinet in (<i>Hus.</i>) in hoc (<i>Gaius</i>) |
| 2. placet ceterorum | | | | placuit (<i>Gaius, Hus.</i>) ceterorum bonis (<i>Gaius.</i> <i>Veronese Codex</i>) |
| ab | | ad | | |
| 3. nam proinde atque | nam et adq : | nam et deinde | nam et ad quem | nam (<i>Gaius</i>) proinde ad nos (<i>Gaius.</i> <i>Hus.</i>) |
| 4-5. nostrae uero hereditates ad feminas ultra consanguineorum | nostrae uero hereditates ad feminas ultra consanguinei eorum | | } <i>omitted</i> | |
| 5. fratri sororiue | | fratris sorori uel | | fratris sorori uel |
| 6. filia heres | | | | filia legitima (<i>Hus.</i>) legitima heres (<i>Gaius</i>) |
| 7. sororis autem nobis loco | sorores au nob [†] | | | |
| 8. manum apud ius nanta | aput cuncta | locum manu | | |
| 10. ei qui sit | quis si sit | quis si sit | quis si sit | iure (<i>Gaius</i>) nanta (<i>Gaius, Ver.?</i>) consecuta (<i>Hus.</i>) ei qui (<i>Gaius</i>) si or st (<i>Gaius, Ver.</i>) |
| 11. superioribus frater potior quia gradu | uperioribus pocior | <i>omitted</i> potior gradum | portior qui ad gradum facta | prior (<i>Gaius, Ver. C.</i>) |
| 12. facta est suos | faciat uos | facta | | facta est (<i>Gaius</i>) |
| 13. extet | exstet | | | |
| 15. numero sint forte nati ex | | n. s. f. aati ex | | forte numero sint nati ut ex (<i>Gaius</i>); f. n. s. n. uelut ex (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|--|--|--|
| PAGE 138— <i>cont.</i> | | | | |
| 15. et aut | | aut | | <i>omitted</i> (<i>Gaius</i>) uel (<i>Gaius, Hus.</i>) |
| 16. stirpes suos | uos | stirpe | | |
| 17. heredes an | <i>omitted</i> | heredum | | |
| autem | au | | | |
| 18. diuidendam quotquot erunt | quodquod dederunt | | quod erunt | tamen (<i>Gaius, Hus.</i>) diuidendam esse (<i>Gaius, Hus.</i>) |
| 19-20. hereditas diuidetur et singuli sin- gulas por- tiones ferunt | <i>omitted</i> fuerunt | hereditas diui- ditur et singuli singulas por- tiones | | hereditas diuidetur ita ut singuli singulas portiones ferant (<i>Gaius, Hus.</i>) |
| 21 uocat sint | (a.) sunt | uocant | | uocant (<i>Gaius Veron.</i>) |
| 22. gentiles com men- tario retuli- mus et | comentariorum et ultimum est | gentilis commentario respondit et ultimum est | commentario et ultimum est | commentario retulimus et (<i>Gaius</i>) |
| 23 admonueri- mus gentilicium desuetudinem | admouerimus | | admoueremus de suae consue- tudine habuisse | totum gentilicium (<i>Gaius, Hus.</i>) abiisse (<i>Hus.</i>) eadem (<i>Gaius</i>) |
| 24. ea tractare | | intractare | | |
| 25. Paulus libro sententiarum iii sub titulo | paulus liber sententiarum vii (vii sententia- rum <i>index</i>) sub titulo | <i>omitted</i> | <i>omitted</i> | |
| 25-26. de intesta- torum suc- cessionibus | de testamento- rum succes- sionibus | de intestato- rum succes- sionibus | de intestorum successionibus | |
| 27. dicuntur testamentum facere non possunt | | testamento | | [et hi] dicuntur (<i>Hus.</i>) f. n. possent (<i>Hus.</i>) |
| 27-28. [uel iure non fecerunt cum possent] | <i>omitted</i> | | <i>omitted</i> | <i>added by Mom.</i> |
| 28. decederent | | dicere | dicerent | |
| PAGE 140. | | | | |
| 1. quorum quibusue | hii quorum cuius nec | hic eorum cuiusue | hic quorum cuius uel | hi quorum (<i>Hus.</i>) quibusue (<i>Mom.</i>); here- disue(<i>Hus.</i>) who adds [quique capite minuti fuerint] |
| 2. nisi [non iure] | sine <i>omitted</i> | sine <i>omitted</i> | sine <i>omitted</i> | sane(<i>Cujas</i>) nisi(<i>Hus.</i>); [non iure] <i>added by</i> <i>Mom.</i> facto (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---------------------------------|---|--|---|
| PAGE 140—cont | | | | |
| 2. testamentum | | | | testamento (<i>Hus.</i>) |
| 3. obiecta exceptione optinebit | abiecta expectatione | abiecta expectationem | abiecta expectatione | obtenebitur (<i>Hus.</i>) |
| 3-4. horum quo- rum testa- menta rum- puntur | eorum qu. t. 1. | eorum qu. t. rumponuntur | eorum qu. t. rumponuntur | h. qu. (<i>Mom.</i>), ii quorum tes. (a postu- mo) r. (<i>Hus.</i>) |
| 4. inrita ipso | inuita | inuita | inuita | (ut inopia) inrita (<i>Hus.</i>) ipsi. (<i>Hus.</i>). (<i>He had also conjectured in Zeitschrift für Gesch. R. W. xiii. p. 46, initio</i>) |
| quidem testati | testamenti | quoque | | testamenti (<i>Hus.</i>) |
| 5. sed per con- sequentias till decedunt decedunt | omitted | | sed per conse- quentia. decedunt | redduntur (<i>Hus.</i>) |
| 7. heredibus deinde | hereditatibus | | | deinde (consanguineis) et (<i>Hus.</i>) <i>Mom thinks et should be deleted</i> |
| et | | est | est et | |
| quoque gentilibus | gentibus | enim gentibus | gentibus | |
| 8. consanguinei quos | consanguineis | consanguineis | consanguineis | consanguinei quos (<i>Cujas</i>) ; consangui- neos (<i>Hus</i>) (aperte) adp. (<i>Hus.</i>) |
| adprehen- derat | | adprehenderet | | |
| 9. interpreta- tione | interpreta- tionem | interpretatio- nem | | (at) interp. (<i>Hus.</i>) |
| locum | loco | | | |
| 10. acceperunt sui primo potestate | hoc primo | accoeperint sibi hoc primum potestatem | suis hoc primo potestatem | hi primo (<i>Hus.</i>) |
| 11. si an et | | eos | tam eos | correctly deleted by the editors (<i>Mom.</i>) sed (<i>Hus.</i>) |
| 12. Iuliam Papiamue quaesiti | Iulia pipiamuae quesiti | papiantum ex- quisiti | papiam uel quesiti | papiam que (<i>Hus.</i>) |
| 13. potestate heredes heredes | | potestatem | heredem heredem | |
| 14. et | | ex | ex | |
| 15. possessio nisi | possessionis | possessiones | possessionis | possessio nisi (<i>Vangerow</i>) erit nec. (<i>Hus</i>) |
| 16. erat necessaria suis a morte | necessariam sui ad mortem | a mortem | sui | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|------------------|-------------------------|--|--|
| PAGE 140— <i>cont.</i> | | | | |
| 17. heredita- riarum continuatur | hereditariorum | hereditari- orum (?) | hereditariorum <i>after</i> continu- atur <i>the word</i> idem (<i>begin- ning a chapter</i>) | |
| nec | | | ne | |
| 18. pupillis | pupillo | | pupillum | |
| furiōsis | | | | furiōsis (<i>Hus.</i>) |
| curator | curatur | | | |
| necessarius | | | (<i>a.</i>) necessarii | |
| nisi | | | | nec si (<i>Hus.</i>) |
| 18-19. [ut absti- neant, si minus forte] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | ut abstineant si m. forte (<i>Krueger</i>), (<i>Hus.</i> , <i>omits</i>) |
| 19. soluendo | soluenda | uoluenda | soluenda | |
| sit | | | | (non) sit (<i>Pith.</i> , <i>Hus.</i>) |
| 19-20. etiam fu- riosus | | (<i>a.</i>) furiosus | | et furiosus (<i>Hus.</i>) |
| 20. resipuerit | resipierit | | resipierit | |
| pupillus | | | in pupillum | |
| adoleuerit | | adheleuerit | | |
| possint | | | possit | |
| 21. patris | patri | | patri | |
| PAGE 142. | | | | |
| 1. secundoue manumissus cuiusue | | manum missus | secundum uel manum missus cuius uel | |
| 2. [est] | <i>omitted</i> | <i>omitted</i> | <i>omitted</i> | <i>added by Krueger</i> |
| fuerint | | fuerit | fuerit | |
| 3. ad | | ab | | |
| 4. ueniunt | ueniant | ueniant | ueniant | |
| proneptes | neptes proneptes | <i>omitted</i> | | |
| ac | hac | aut | | |
| 5. masculino sexu | sexum | | masculinu sexum | |
| per | post | post | post | per (<i>Rittershusius</i>) |
| nullo | nullum | nullo | nullo | |
| parentum | | | parentium | |
| 6. inpedimento | | | inpedimentum | |
| potestate | | potestatem | | |
| familia | famili | familia | familia | <i>might be deleted</i> |
| remanserint | remanserit | permanere | remanserit | (<i>Mom</i>) |
| 7. fuerint | fuerunt | fuerit | fuerint | fuerunt (<i>Hus.</i>) |
| 8. ordine | ordinem | ordinem | | |
| successionis | | successionem | successiones | |
| obsistunt | | constituunt | obstituunt | |
| fili si | filius | filius | filius | filius (<i>Hus.</i>) |
| 9. in familia | infamia | | | |
| retinentur | | | | retinetur (<i>Hus.</i>) |
| ad intestati | ab intestato | | | |
| patris | | | patri | |
| 10. filius | | | filius | |
| uocantur | | uocatur | uocatur | uocatur (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|---------------------------------------|----------------------------|-------------------------------------|--|--|
| PAGE 14]— <i>cont.</i> | | | | |
| 10. quibus partem | in quibus parentem | parentes | parentes | |
| 11. in stirpes non diuiditur ita | in styrces non diuiduntur | | <i>omitted</i> diuiduntur item (<i>beginning of a new chapter</i>) | |
| unus et | <i>omitted</i> ex | ex | ex | |
| 12. semisses idemque | idque | idque | semisse idque | idemque (<i>Pith</i>) |
| 13. auo impari successerint | ab eo in patrum | ab eo in patrum successerunt | ab eo in patrum | auo <i>editors</i> impari (<i>Hus.</i>) |
| 14. heredes aui materni potestate | auiae | materna potestatem | heredem potestatem | |
| 15. ratione | rationem | rationes | | |
| 16. heres constitutus | constituendos | | heredes | |
| quo | | quod | | |
| 17. decessisse euentu | decessisset | | euentum | secundum quod ex euentu (<i>Hus.</i>) |
| 18. et ortu nepotis | et hortum nep. | et certum nep. | et ortum nep. | nepos is (<i>Hus.</i>) |
| 18. auo | | | | auo conceptus (<i>Hus.</i>) |
| 18-19. [conceptusaui] | | | | <i>Added by Mom. (cf. Inst. III., 1. 8)</i> |
| 19. finire quem | iniri cum | siniri cuius | siniri idem cum (<i>beginning a new chapter</i>) | est suus fieri (<i>Hus.</i>) |
| emancipatus | et mancipatus | et emancipatum | | |
| 20. adoptauit sui heredis successione | | adoptiui heredes successionem | suis heredes | |
| 21. [potest] adoptiuus | | | adoptiuum | <i>added by Mom.</i> |
| 21-22. nec quasi | ne quasi | ne quasi | neque si | ne quasi (<i>Hus.</i>) |
| 22. possessionem petere potest si | possessionum potire | possessionum | possessionum | |
| 23. agnatos pertinebit | | potens agnatum | pertineri <i>Here the Vercelli Codex ends.</i> | |
| 25. cognati uirilil [sexum] | cognatis <i>omitted</i> | uirili <i>omitted</i> | | descendentes sexum (<i>Hus.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|--|---------------|--|
| PAGE 144— <i>cont.</i> | | | | |
| 1. [quod] etiam | <i>omitted</i> enim etiam | <i>omitted</i> etiam | | quod (<i>Paul.</i>) etiam (<i>Paul.</i>) |
| 2. cognatos | agnatos | agnatos | | |
| 3. agnatus auunculus | abunculus | | | et agnatus (<i>Paul.</i> , <i>Hus.</i>) |
| 4. tantum modo est patre | tantum modum patrem | t. modo | | <i>omitted in Paulus</i> |
| 5. qui in potes- tate fuerunt | | quibus in potes- tate fuerint | | |
| 7. patris causam probauerunt | patri causa | causa probauerant | | |
| 8. consanguini- tatis | | sanguinitatis | | |
| 9. agnatis defer- tur | | agentis differtur | | |
| 10. gradu | gradum | gradum | | |
| 11. eodem gradu | eodem gradum | eosdem gradus | | |
| 11-12. si sint de- functi fratris et filius et nepos | si sit frater defuncti et fra- tris filius et nepus | si sit frater defuncti et fratris filius et nepos | | si sint fratres defuncti et fratres filii uel nepotes. <i>Paul.</i> , ac- cording to <i>Kürger's</i> <i>emendation.</i> si sint, fratre defuncto, et fratris filius, et nepos eius ex (<i>Hus.</i>) |
| 12. fratre existente | fratres et existentes | existentem | | |
| 13. praeferitur | perfertur | | | |
| 14. numero | | numerus | | |
| 15. iurim distribuatur | uirium | iuri distribuitur | | |
| 16. consanguin- eorum | consanguineas | consanguineos | | consanguineorum (<i>Hus.</i>) |
| admittuntur id quod | admittantur id quod | amittantur hi quod | | idque (<i>Paul.</i> , <i>Hus.</i>) uoconia narratione (<i>Paul.</i>) |
| 17. Voconiana ratione | uoconia rationem | coniurationem | | nulla (<i>Paul.</i>) ; sine illa (<i>Hus.</i>) discretionem sexus (<i>Paul.</i>) |
| 18. sine ulla discretionem sexus admittit | discreptiones ex his cognatos ad- mittit | discepcionem sexus cognatis admittit | | <i>Mom. deletes cognatos.</i> discretionem (feminini) sexus agnatos admittit (<i>Hus.</i>) Ulp. lib. regularum sin- gulari s. t. (<i>Hus.</i>) |
| 19. Ulpianus libro singu- lari regu- larum] sub titulo | ulpianus libro singulari sub titulo | <i>omitted</i> | | |
| 20. hereditatibus | | | | heredibus (<i>Ulp.</i>) |
| 21. ingenuorum | gentiliciorum | gentiliciorum | gentiliciorum | ingenuorum (<i>Ulp.</i> , <i>Hus.</i>) gentiliciorum (<i>Mom.</i>) |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|---|---------------------------------|-----------|--|
| PAGE 144 <i>cont</i> | | | | |
| 23. liberorum | liberorum | in liberorum | | in liberorum (<i>Codex of Ulp.</i>) |
| non sunt | non sint | non sint | | non sunt (<i>Ulp.</i>), non sint (<i>Hus</i>) |
| 24. et | | aut | | |
| patre sunt | patrem | | | sint (<i>Hus.</i>) |
| 25. [proximos id est cognatos uirilis | { omitted | { omitted | | proximos id est cognatos (<i>Blume from Ulp.</i>) |
| 26. mares eiusdem id lege | matres eisdem his lëgem | matres | | |
| 27. intestatus cui suus | cuius | cuius | | intestato (<i>Ulp.</i>) cui suus (<i>Ulp.</i>) |
| 28. escit familiam habeto | est familia habetur | est habetur | | familiae (<i>Ulp.</i>) habeto (<i>Ulp.</i>) |
| 29. eadem | eamdem | eamdem | | |
| PAGE 146. | | | | |
| 1. uocat si agnatus nec escit | uocant signatus nescit | uocantur sic natus nescit | | si agnatus (<i>Pith.</i>) nec, with a blank space (<i>Ulp Codex</i>) |
| familiam | | familias | | |
| 2. [habento nunc nec ullus est heres hinc | { omitted | { omitted | | Added by Mom. habento nunc (nec gentiles) (<i>Hus.</i>) omitted by <i>Hus.</i> |
| 3. usu sunt | hanc | hanc usui est | | |
| 5. idem [libro] institutionum.....[sub titulo de successioneibus] ab intestato | { item (idem <i>index</i>) ab intestatio institutionum | idem ab intestato institutionum | | idem libro inst. (secundo s. t. d. s.) ab intestato (<i>Hus.</i>) |
| 6. ab defertur | | ad differtur | | |
| 8. fuerunt [qui sunt] | omitted | fuerint | | Added by Mom. |
| 9. quia nati sunt succedunt | qui | qui succedunt | | quia (<i>Mom.</i>) natus sit (<i>Hus.</i>) |
| 10. idem libro | item liber (<i>index</i>) | | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--------------------------------------|--|--|-----------|--|
| PAGE 146 -cont. | | | | |
| 11. post suos | post suos (<i>text</i>) postumos (<i>index</i>) | post tuos ¹ post duos ² | | |
| intestato | intestos (<i>index</i>) | legitim(a)e | | |
| legitimi | legitim(a)e | primi | | |
| primum | | | | |
| 12. [consanguinei] | <i>omitted</i> | <i>omitted</i> | | <i>added by Lenel Palingen. Ulp. fr. 1926</i> |
| 12. frater et soror | fratres et sorores | | | fratres et sorores (<i>Hus.</i>) |
| eiusdem | eisdem | | | |
| 13. potestate | potestatem | potestatem | | |
| patris | patres | fuerint | | |
| fuerunt | | <i>omitted</i> | | <i>Added by Mom.</i> |
| 14. [et] | <i>omitted</i> | | | |
| 15. manum | manu | | | |
| 16. idem | item | | | |
| libro | | liber | | |
| 17. de[ficien- bus] consanguineis | deconsanguineis (<i>index</i>) et consanguineis (<i>text</i>) | { et consanguinei | | deficientibus consanguineis <i>Mom. on the authority of Ulpian Dig. xxxvii., 2, 2 pr, post consanguineos admittuntur agnati, si consanguinei non sunt, merito: nam si sunt consanguinei, licet non adierint hereditatem, legitimis non defertur. Hus. has post consanguineos</i> |
| 18. nos | | non | | |
| uirilis | uiris | uirili | | |
| 19. consanguineas | (a.) consanguineas | | | |
| 20. praetor | | praeter | | |
| solet | | <i>omitted</i> | | |
| emancipatos | et mancipatus | | | |
| 21. ciuitate | ciuitatem | ciuitatem | | |
| donatos | donatus | donatus | | |
| possessione | possessiones | possessiones | | |
| | | <i>Here ends the Vienna Codex.</i> | | |
| ita tamen | hi tamen | | | sic tamen (<i>Hus.</i>) |
| 22. si | sit | | | |
| 23. conferant | conferat | | | |
| 24. quod | qui | | | quod (<i>Boccking</i>) |
| praecipua | precipuum | | | |
| bona | bonam | | | |

TEXTUAL VARIANTS.

| Line and Word. | Berlin. | Vienna. | Vercelli. | Other Readings. |
|--|--|---------|-----------|---|
| PAGE 146— <i>cont.</i> | | | | |
| 25. ablaturi suis heredibus | ablaturis suis hoc redibus | | | |
| 26. idem libro [sub titulo] de suis | idem liber (<i>index</i>) <i>omitted</i> | | | d. s. (et legitimis) (<i>Hus.</i>) |
| PAGE 148. | | | | |
| 2. patrono | patronum | | | |
| 3. patronaeue lege defertur | patronauae legem refertur | | | |
| 6. item liberos | idem liber (<i>index</i>) | | | |
| 7. cognatos | cognatus | | | |
| 8. liber [nec] remancipa- tione | libero <i>omitted</i> remacipationem | | | <i>added by Mom.</i> (mancipatione citra re- mancipationem) (<i>Hus.</i>) |
| 9. manumissori legitimam | manumissoris legitima | | | |
| 11. auum | aiium | | | |
| 12. nepotem occasione | nepote occansionem | | | |
| 15. immunitatem | immunitate | | | |

LISTS OF THE TITLES,
THE SUPERSCRPTIONS AND
SUBSCRIPTIONS, AND OF
THE CHAPTERS.

TITLES.

In Pithou's Edition.

- I. De sicariis et homicidis casu uel uoluntate.
- II. De atroci iniuria.
- III. De iure et saeuitia dominorum cohibenda.
- IIII. De adulteris.
- V. De stupratoribus.
- VI. De incestis.
- VII. De furibus et poena eorum.
- VIII. De falso testimonio.
- VIIII. De familiari testimonio non admittendo.
- X. De deposito.
- XI. De abigeis.
- XII. De incendiariis.
- XIII. De termino moto.
- XIV. De plagiaris.
- XV. De mathematicis, maleficis et Manichaeis.
- XVI. De legitima successione.

In Scaliger's Apograph. (from Blume's Edition.)

- I. De sicariis.
- II. De atroci iniuria.
- III. De iure et saeuita dominorum cohibenda.
- IIII. De adulteriis, stupratoribus, et incestis.
- V. De furibus et poena eorum.
- VI. De falso testimonio.
- VII. De deposito
- VIII. De abigeis.
- VIIII. De incendiariis.
- X. De termino moto.
- XI. De plagiaris.
- XII. De mathematicis, maleficis et Manicheis.
- XIII. De legitima successione.

SUPERSCRPTIONS AND SUBSCRIPTIONS OF TITLES IN THE MSS.

| BERLIN. | VIENNA. | VERCELLI |
|--|---|---|
| Incipit capitulū legis dei, <i>followed by index of the chapters and Julian with the additions.</i> | Incipit legem dei quod prececepit dominus ad moysen, <i>followed by index of the chapters.</i> | Incipit capitula legis quod precepit deus ad mosen, <i>followed by index of the chapters, and Julian with the additions.</i> |
| Incipit lex dei quam deus precepit ad moysen. <i>Then follows the text without subscription to the book.</i> | Explicit kap. Incipit liber primus. <i>Then follows the text ending xvi. 7, 2, with the words bonorum possessiones explicit, also the 4th title has the prescription constitut. iiii. de legem moysi.</i> | Incipit legem dei quod precepit dominus ad moysen. <i>Then follows the text ending xvi. 3, 13, with the words heredibus pertinere. There is no subscription to the book.</i> |
| Title I., 4, <i>at the end</i> : item (idem, <i>index</i>) de causalibus homicidiis.* | item de causalibus homicidiis.* | item de causalibus homicidiis.* |
| Title I. 5, <i>end</i> . Explicit. titulus de sicariis et homicidis casu uel uoluntate. Incip. de atroci inturia (<i>sic</i>). | explicit. de sicariis. incip. de atrociniis iniuriis. | * explicit. titulo de sicariis et homicidiis. <i>omitted.</i> |
| Title II. <i>end</i> : Explicit de atrociis iniuriarum kp. iii. cons. (<i>in black and then in red, kp. dcxvi.</i>) Incipit de iure et sebitia (sed uitia, <i>index</i>) dominorum. | explicit de atrociis iniuriarum. incipit de iure et seuitia dominorum constit. tituli III. | <i>omitted.</i> incipit de iure et saeuitia dominorum |
| Title III. <i>end</i> : Expl. titulo de dominorum seuitia cohibenda cons. iiii. Incip. de adulterio. | expl. de dominorum seuitia. incip. de adulteriis constitut iiii. de legem moysi. | expl. titulo de dominorum seuitia. incip. de adulteriis. |

* This is the prescription to Chapter 5.

SUPERSCRPTIONS AND SUBSCRIPTIONS OF TITLES.

| BERLIN. | VIENNA | VERCELLI. |
|--|---|--|
| Title IV. <i>end</i> : | | |
| Expl. titulo quinto. Incip. de stupratoribus. | explicit de adulteris. incip. de stupratoribus | expl. cap. quod supra. incip. de strupatribus. |
| Title V <i>end</i> : | | |
| Expl. titulo de stupratoribus. Incip. de incestis (ingestas, <i>index</i>) nuptiis. | expl. de stupratoribus. incip. de incestis nuptiis | <i>omitted</i> . incip. de incestis nuptiis. |
| Title VI. <i>end</i> : | | |
| Expl. titulo de adulteris stu- pratoribus et incestis. Incip. de furibus et de poena eorum. | <i>omitted</i> . incip. de furibus et de penis eorum. | <i>omitted</i> incip. de furibus et de paene eorum. |
| Title VII <i>end</i> : | | |
| Expl. titulus de furibus Incipit de falso testimonio. | expl. de furibus incipit de falso testimonio. | <i>omitted</i> . item de falso testimonio. |
| Title VIII <i>end</i> ; VIII. | | |
| | <i>omitted</i> . | <i>omitted</i> . |
| Title IX. <i>end</i> : | | |
| Expl. titulus de familiariis testimonium non admit- tendo decimo. Incipit de deposito. | explicit de falso testimonio. incipit de deposito | expl. titulo de testimonia. incipit de deposito [x de de- posito Codex Bellovacensis.] |
| Title X <i>end</i> : | | |
| Expl. titulo de deposito unde. Incipit de abegetoribus (ab- batoribus, <i>index</i>) | explicit de depositis incipit de abactoribus | <i>omitted</i> . incipit de actoribus. |
| Title XI <i>end</i> : | | |
| Expl. de abigeis de incendiariis XII. (Incipit de incendiari, <i>index</i>) | expl. de abactoribus. incipit de incendiariis | <i>omitted</i> . incipit de incendiarius duodecim |
| Title XII <i>end</i> : | | |
| Expl. titulo de incendiariis. Incip. de terminia mota XIII. (mota <i>omitted in index</i>). | expl. de incendiis. incipit de termino amoto. | <i>omitted</i> item de termino amoto. |

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Title XIII. *end* :

| | | |
|------------------------------------|----------------------------|-----------------|
| Expl. titulus de terminea mota. | explicit de termino amoto. | <i>omitted.</i> |
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| | | |
|-----------------------------|------------------------|---------------------|
| Incip. de plagiariis xiiii. | incipit de plagiariis. | item de plagiariis. |
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Title XIV. *end* :

| | | |
|--------------|-------------------------|-----------------|
| Expl. titul. | explicit de plagiariis. | <i>omitted.</i> |
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| | | |
|---|-------------------------|------------------------------|
| Incip. xu. de mathematicis et manicheis. | incip. de mathematicis. | de mathematicis et manicheis |
|---|-------------------------|------------------------------|

Title XV. *end* :

| | | |
|--|---------------------------|-----------------|
| Expl. titulus de mathematicis maleficis et manicheis. | explicit de mathematicis. | <i>omitted.</i> |
|--|---------------------------|-----------------|

| | | |
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| Incip. titulus xui de legitima successione. | incip. de legitimis actiones. | item de legitima actione |
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Title XVI. .

No subscription.

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| (Fol. 17, line 11.) | (Fol. 162 <i>b</i> , col. 2, at the end.) | (Fol. 6 <i>b</i> , col. 2, line 22.) (Kp. DXCII. Idē de episcopis et monachis. Explicit.) |
| Incipit Capitulum Legis Di. | Incipit Legem Di Quod Precepit Dns ad Moysen. (Fol. 163 <i>a</i> , col. 1.) | Incipit Capitula Legis Quod Precepit Ds ad Moysen. Moyses Di Sacerdos Hec Dicit. |
| Kp. DXCIII. Paulus quoque libro quinto sententiarum. | I. Moyses sacerdos dicit. | Kp. I. Si quis pousserit homi nē ferro. |
| Kp. DXCIII. Ulpianus libro septimo de officio proconsuli. | II. Ad legem corneliā de sicariis et beneficiis dicit. | Kp. II. Paulus quoque Libr V. sententiarū sub tit ad le- (Fol. 7 <i>a</i> , col. 1.) |
| Kp. DXCV. Relatis uerbis legis modo ipse loquitur. | III. Ulpianus liber VII. de officio proconsulis sub titulis de sicariis et beneficiis. | gem corneliā, Kp. III. De officio proconsulis, Kp. IIII. |
| | IIII. Relatis uerbis legis modo ipse loquitur. | Quicūq, cū telo ambulauerit. |
| Kp. DXCVI. Idem paulus libro quod supra et titulu dicit. | V. Itē paulus libro quo supra, et titulo dicit. | Kp. V. Idē paulus libro quod supra et titulo. Kp. VI |
| Kp. DXCVII. Idem de causalibus homicidis. | | |
| Kp. DXCVIII. ulpianus libro et titulo | VI. Ulpianus lib et titulo qui supra. | Ulpianus libro et titulo qui supra. |
| Kp. DXCVIII. uerba rescripti, et qui hominē caŕ. | VII. Verba rescriptis. | Kp. VII. Verba rescripti qui hominē occidit. Absolui solet. Kp. VIII. Paulus lib tertio quinto tit quod supra. |
| Kp. DC. paulus libro tertio quinto titulo quā sup. | VIII. Paulus liber tertius titulū qui supra. | |
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| Kp. DCIII. Ulpianus libro et titulo quod supra. | XII. Ulpianus liber et titulus qui supra. | |
| Kp. DCV. Uerba consultationis et rescripti ita se habentem inter clodium optimē imp. | XIII. Verba consultationis et rescripti. | Kp. XIII. Imp. euaristus cognoui quod claudius luppi filius in conuino Kp. XIII. |

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| Kp. DCVII. Modestinus libro differentiarum sexto sub titulo. | XV. Paulus libro et titulo qui supra. Explicit de sicariis et Homicidiis Causa. Vel uoluntatem. | Kp. XVI. Idē, Kp. XVII. Incipit. |
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† Indicates Names of Authors who have discussed complete parts of the *Collatio*.

[] Indicates Names of Authors who have discussed passages of the *Collatio*, that are also found in GAIUS, ULPIAN or PAULUS.

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